



312066 0361 4518 0

Office of the State Auditor  
Division of Local Mandates

# DLM

## R E P O R T

A. Joseph DeNucci  
Auditor of the Commonwealth

COLLECTION

MAY 15 1989

University of Massachusetts  
Depository Copy

*At a time when the state's revenue base is being restricted and local governments by necessity have had to place greater reliance on state aid to pay for*

*local services, it has become critical for all levels of government to manage their resources more efficiently and effectively. I believe that my office has played, and will continue to play, an important role in accomplishing this task.*

*Our review of Chapter 766 under DLM's Sunset Review Program, coupled with our audit efforts at the state agency level, provides my office with a unique opportunity to recommend improvements to a program that certainly has a significant financial impact on both municipal and state resources.*

*The DLM Legislative Program is a new initiative of my administration aimed at working with lawmakers to prevent unfunded state mandates by providing legislators with cost-impact studies and other pertinent data.*

*Because of the competing interests for limited dollars, the anti-mandate provision of Proposition 2 1/2 will become even more important in protecting cities and towns from state initiatives having financial implications. DLM will continue to vigorously carry out its mission - to identify and prevent such impositions - and will continue to work with state and local governments to improve service delivery.*

*If you have a question, comment or suggestion about how my office can be more responsive to your needs, please feel free to contact us by calling 1-800-462-2678.*

A. Joseph DeNucci  
Auditor of the Commonwealth

## Norfolk Landfill Case Decided

State Auditor A. Joseph DeNucci praised a court ruling supporting an earlier decision by his Division of Local Mandates (DLM) that the Department of Environmental Quality Engineering (DEQE) requirements for sanitary landfill liners violate the anti-mandate provisions of Proposition 2 1/2.

Judge William H. Welch ruled in Norfolk Superior Court that the Town of Norfolk is entitled to \$144,000 in state funding for the installation of a liner at its municipal landfill.

DLM's determination, which was made by former Auditor John J. Finne-

gan, was an important consideration in the Judge's ruling. Auditor DeNucci commented "the DLM position was given great weight by the court and demonstrates the professional work done by DLM, as well as the importance of DLM's role in protecting cities and towns from state-imposed mandates."

The ruling applies not only to Norfolk but also to the towns of Hull and Boxford, which joined the suit, "... and to future towns and cities that might face this issue," Judge Welch added.

*Continued on page 2.*

## DLM Begins Special Education Study



Auditor DeNucci and Education Commissioner Harold Raynolds

Auditor DeNucci has announced that his office has begun a study of special education services, commonly known as Chapter 766. The study is designed to assess the effectiveness of the statute since its implementation in 1974.

While a number of studies have been done by various groups over the years,

*Continued on page 3*

## Auditor DeNucci Meets Mayors

Auditor DeNucci recently met with the mayors of five western Massachusetts communities, Chicopee, Holyoke, Northampton, Springfield, and Westfield, as well as Selectmen from Blandford and Southwick, to discuss issues of concern to them, in particular the expenses incurred under Chapter 766, the Special Education Law. Mayor George Varelas of Westfield hosted the meeting.

DeNucci told the mayors that he has ordered his Division of Local Mandates to undertake a study of the law. DeNucci stated, "The Office of the State Auditor is uniquely suited to undertake this task because of our ability to audit those state agencies responsible for the needs assessment, planning, and monitoring of Ch. 766 programs. We also have the ability to audit vendors who monitor and supply services."

*Continued on page 5*

## Solid Waste Act Amended

The three-percent-set-aside requirement of the Solid Waste Act has been delayed until July 1, 1992. The change is a result of Section 159 of the fiscal year 1989 state budget, effectively amending the Solid Waste Act.

Specifically, St. 1987, c. 584, s. 3, added G. L. c. 21H, s. 6, requiring that three percent of tipping fees for waste disposal at refuse-burning facilities be set aside by the facility operator for future costs connected with pollution abatement. The Division of Local Mandates, in a decision earlier this year, determined that this provision was not legally a state-mandated cost on cities and towns contracting with private refuse-burning facilities.

This determination was based on the fact that the law sets compliance expectations only on private facilities and not directly on cities and towns contracting with those facilities. Although tipping fees will be increased as a practical matter, the increases result from contractual pass-through clauses included in contracts negotiated between municipalities and facilities.

Cities and towns have now been afforded temporary relief from the three-percent-set-aside requirement. Again, the FY 1989 state budget has amended G. L. c. 21H, s. 6, to delay this provision until July 1, 1992.

If you have any questions or concerns regarding this matter, please feel free to contact Tom Collins, DLM Director, at 1-800-462-2678.

DLM maintains a field staff of regional representatives who are available to visit your community. To contact the representative in your area, please call 1-800-462-2678.

## Nick Maffei to Head Research Unit



State Auditor A. Joseph DeNucci has announced the appointment of Nicholas Maffei of East Boston as the new head of the Sunset Review Program within the Auditor's Division of Local Mandates. The Sunset Program is the name given to the State Auditor's review of laws and regulations under authority granted by Chapter 126 of the Acts of 1984. Essentially, the law gives the Auditor the authority to review existing laws that have a significant fiscal impact on cities and towns and to make recommendations for changes or elimination to the Legislature.

In making the appointment, Auditor DeNucci said, "Nick Maffei has proven to be a professional in every sense of the word. I am confident of his abilities, and I look forward to his continued dedication to good government. The Division of Local Mandates, particularly its Sunset Review Program, is one way in which the taxpayers of Massachusetts benefit by the Auditor's role of making government more efficient and effective. I am pleased to appoint Nick Maffei to this important position."

Mr. Maffei began working at the Auditor's Office in 1986 as a research analyst. He holds a Masters Degree in Public Administration from Suffolk University and is a member of the Honor Society for Public Affairs and Administration, Pi Alpha Alpha. Mr. Maffei is an Honorary Fellow at the John F. Kennedy Memorial Library, has been published in the National Civic Review and is a member of the Massachusetts Government Finance Officers Association. A life-long resident of East Boston, he lives in the Orient Heights section with his wife Beverly.

## Norfolk Landfill

*Continued from page 1*

By 1986, DLM determined that the state must reimburse five towns - - Norfolk, Hull, Boxford, Greenfield, and Pembroke - - for liner costs. All five of these towns had appealed to DLM claiming that they were being directed by DEQE to undertake a costly project without any funds being provided for implementation.

Under Proposition 2 1/2, the Auditor ensures that state mandates are not imposed on cities and towns unless funding is provided by the Commonwealth.

Because Norfolk did not receive state

funds following DLM's 1985 ruling, the town began its long legal battle that culminated in this week's court decision.

Auditor DeNucci said "this is an extremely significant court decision that strengthens the anti-mandate provision of Proposition 2 1/2. The state's revenue base is being restricted and local governments are being forced to place greater reliance on state aid to fund for local services. As we look to the future, it will become even more important to protect cities and towns from state initiatives having financial implications on municipalities."



## Teacher Certification Bill A Potential Mandate

The Division of Local Mandates (DLM) has determined that certain provisions of House bill 92, An Act Establishing Improved Standards in Teacher Preparation and Certification, would impose new compliance costs on cities and towns, and would be, therefore, a mandate without funding. According to Department of Education (DOE) reports, the implementation of this bill would result in an annual cost of over \$12 million to public school systems throughout the Commonwealth.

In a recent letter to House Ways and Means Committee Chairman Richard Voke, Auditor DeNucci requested that "the legislation be amended to include

appropriation language necessary to assume local implementation costs. If House bill 92 becomes law without local funding, cities and towns have the right, under the local mandate statute, to petition Superior Court for an exemption from compliance until state funding is provided."

House bill 92, sponsored by DOE, would revise the teacher certification process in Massachusetts. The bill would mandate public school systems to (1) select certain teachers within the system to serve as mentor teachers, supervising new teachers who have been certified on a provisional basis by DOE, and (2) grant the supervisory teachers adequate release time from regular

teaching responsibilities to enable them to fully perform their additional duties.

The new law would amend G. L. c. 71, s. 38G, and would not specify the amount of compensation the mentor teachers would receive nor the quantity of release time they would be granted. But amendments from the Joint Committee on Education would require an annual stipend of \$5,000 for mentors and 20-percent release time from their regular teaching duties, requiring hire of additional teachers.

DLM was asked by Peter Finn, Executive Director of the Massachusetts Association of School Superintendents, to determine the mandate implications of the legislation.

## DLM Begins Special Education Study

*Continued from page 1*

the Auditor's current undertaking is unique because of the authority of the Auditor's office and the nature of the study itself. The Office of the State Auditor has the responsibility under Chapter 11 of the Massachusetts General Laws to audit state agencies that assist in the provision of services to special education students such as the Rate Setting Commission, the Bureau of Special Education, the Bureau of Transitional Planning, and other social service agencies that support this program. Unlike most previous audits, however, these will be "performance" or "operational" audits of these agencies that should help to improve their service delivery.

Also, under the Sunset Law, Chapter 126 of the Acts of 1984, the Office of the State Auditor's Division of Local Mandates has the authority to review laws and regulations that have a signifi-



*Auditor DeNucci meets with DLM and Department of Education representatives.*

cant fiscal impact on cities and towns. Therefore, according to DeNucci, the Auditor's Office will undertake a combined operation utilizing all resources available to it.

Auditor DeNucci, in ordering the study, asked his staff to look for ways to improve service delivery and effect savings wherever possible. "We want this to be an effective, objective study," said the Auditor. "In order to do that, we want to hear from people who are directly involved so that we can under-

stand everyone's concerns." The Auditor's desire is to ease the current financial burden on municipalities and maintain a commitment to human services. To accomplish this, he has asked for assistance from state agencies, educators, advisory groups, municipal officials, and legislative leaders.

The study will focus on several areas frequently cited as matters of concern, such as transportation, educational collaboratives, out-of-district placements, rate setting and tuitions.

In the last several weeks, study team members have been meeting with interested parties to gather information and solicit opinions. The Division of Local Mandates is actively seeking written comments from special education professionals, teachers, parents, and local officials. Questions and concerns should be directed to Emily Lunceford at Suite 950, 100 Boylston Street, Boston 02116, 1-800-462-2678.

## Real Estate Tax Bill Legislation Studied by DLM

**A**uditor DeNucci's Division of Local Mandates (DLM) has recently completed a study examining the financial impact on cities and towns from Section 1 of Senate bill 26. The Division has determined that approval of Senate bill 26 would impose additional costs on municipalities subject to the local mandate statute, G.L. c. 29, s. 27C(a). The bill, entitled **AN ACT RELATIVE TO A BANK'S OBLIGATION FOR FINES ON LATE TAX PAYMENTS PAID FROM ESCROW ACCOUNTS HELD BY BANKS**, would require municipal tax collectors to send a separate tax bill for each individual parcel of real estate to the mortgagee of record in addition to the listed owner. First-year municipal-implementation-cost projections indicate that an appropriation of \$1,909,000 would be required to assume these costs.

Because this requirement potentially imposes additional costs on cities and towns, DLM was petitioned by Senator John P. Burke (D-Holyoke) and Representative Thomas M. Finneran (D-Boston), the co-chairmen of the Joint Committee on Banks and Banking. In response, DLM conducted a study of the financial ramifications of Senate Bill 26 on cities and towns by consulting with municipal tax collectors, the Department of Revenue, and representatives from the banking and real estate industries. In addition, 34 municipalities, including the City of Boston, completed a survey estimating cost impacts in the following areas: printing, postage, labor, maintenance of mortgage lists, and other expenses.

According to the survey's findings, there are approximately 1.8 million individual parcels of real estate in Massachusetts, and it is estimated that 1,440,000 (80 percent) of these properties are mortgaged. In addition, results indicate that close to 50 percent of mortgagors are required to prepay property taxes. Therefore, in compliance with Section 1 of Senate bill 26, 1,440,000 property-tax notices must be

sent to notify mortgage holders of approximately 720,000 prepaid-tax escrow accounts due. However, 8 out of the 34 respondents, including the City of Boston, have sent duplicate tax bills to mortgagees by request. These municipalities indicate that the voluntary system works well and that operational changes mandated by Senate bill 26 will impose costs while not necessarily expediting municipal tax collection.

Other comments from the survey respondents have indicated that, because of the complexity of maintaining an accurate list of mortgagees resulting

from the fluctuating real estate market, identifying the mortgagee for each parcel would be difficult. In addition, mortgage holders would have no use for tax information on parcels where the property taxes are not held in escrow accounts.

All 34 respondents to the surveys indicated that Senate bill 26 would impose costs, and 56 percent of those surveyed commented they do not favor enactment of the bill.

If you would like further information about this study or the research, please contact DLM at 1-800-462-2678.

## Police Training Report Completed

**T**he Division of Local Mandates has completed and presented to the Legislature a report on the potential fiscal impact on cities and towns of a proposal requiring more extensive training of part-time police officers.

The study was undertaken at the request of the Joint Committee on Public Service's Sub-Committee on Mandatory Police Training and the Massachusetts Criminal Justice Training Council (MCJTC). Specifically, the study examines the potential costs of House Bill No. 84, *An Act Relative to the Training of Persons Exercising Police Powers*. This proposed 1987 legislation, which has been refiled in the present legislative session as House No. 77, would require that all part-time police officers satisfactorily complete a course of study prescribed by the MCJTC in order to continue exercising police powers. The legislation reflects growing concern for public safety and municipal liability flowing from acts and omissions of untrained and under-trained police officers.

In conducting the study, DLM analyzed information gathered through an August 1987 survey distributed to all 351 municipal police departments, as

well as other law enforcement agencies. Some 193 communities responded, representing about 55% of all Massachusetts cities and towns. Using the 193 respondents as a data base, DLM researchers Linda Costanzo and Ellen O'Connor projected their analysis to reflect the entire state's local law enforcement departments.

Based on the analysis, DLM estimates that there are approximately 6,250 part-time police officers working in the Commonwealth. If all current part-time officers were required to complete the new training requirements, the cost, based on an average hourly wage of \$8.37, could run as high as \$25 million for a 480-hour course.

The study represents Auditor DeNucci's commitment to expand the role of DLM by working with the Legislature and other state agencies to identify potential mandates and to provide cost data about legislation having a fiscal effect on cities and towns.

If you would like further information about this study or other research done by DLM, please contact Noreen Hazelton at 727-0025.



## Ambulance Funding Problems

State money slated to be distributed to 11 municipal ambulance systems has been lost. The \$60,000 balance of the original \$175,000 appropriation was sent back to the state's general fund by the Department of Public Health (DPH). In early April, Auditor DeNucci notified DPH of the supplemental reimbursement to cities and towns for mandated costs associated with updated ambulance-service regulations. By late May, the Division of Local Mandates (DLM), concerned that the funding had not been delivered, requested that the DPH Commissioner make certain that the funding be distributed, as required by the statute. We were informed in June that the funding had been reverted.

Reversions are usually excess agency funds sent back to the general fund when the appropriation expires. However, in this case, the funding had already been promised to the 11 towns by the General Court. DLM had already notified these towns that the funding was on the way. This money was intended to reimburse cities and towns for paramedic training and life-saving equipment. Although the appropriation was inserted into DPH's budget, under the terms of the line item, it was not to be available to DPH for any other purpose, including reverting the encumbered balance.

Also deleted during the budget process was \$175,000 in FY 1989 ambulance-service-reimbursement funding.

DLM will assist in the effort to have both the FY 1988 and 1989 funding restored.

### MONIES LOST TO REVERSION

*Certified costs incurred complying with 1982 Department of Public Health  
Emergency Medical Service Regulations*

105 CMR 170.000 Et Seq.

<u>MUNICIPALITY</u>	<u>CERTIFIED COSTS</u>
Agawam	\$ 5,795
Ashby	4,563
Brewster	7,749
Brookfield	622
Granby	2,211
Harwich	11,038
Orleans	6,762
Rochester	313
South Hadley	4,957
Wellfleet	3,823
Worcester	12,102
<b>TOTAL</b>	<b>\$59,935</b>

## Auditor DeNucci Meets Mayors

*Continued from page 1*

Auditor DeNucci, in ordering the study, asked his staff to look for ways to improve service delivery and effect savings wherever possible. The Auditor's desire is to ease the current financial burden on municipalities and maintain a commitment to human services. To accomplish this, he has asked for assistance from state agencies, edu-

cators, advisory groups, municipal officials, and legislative leaders.

The study will focus on several areas frequently cited as matters of concern, such as transportation, educational collaboratives, out-of-district placements, rate setting, and tuitions.

"It is important that as Auditor, I meet with local officials to learn about their needs and concerns. With the support

and assistance of both state and local officials, my review of Chapter 766 will hopefully provide some worthwhile recommendations to the Legislature and make an important program operate even better. Given the fiscal constraints of many communities in the era of Proposition 2 1/2, we must ensure that communities are not mandated new costs by the state," said Auditor DeNucci.

## Distribution of Polling Funds Announced

**A**uditor DeNucci has determined that \$786,123.85 will be distributed to cities and towns to offset their increased costs for coverage of extended voting hours for the September and November 1988 elections.

According to the Auditor, a 1983 law has established polling hours across the Commonwealth from 7:00 a.m. to 8:00 p.m., enabling citizens additional time to vote. However, the law has also increased the cost of polling.

The Division of Local Mandates is responsible for ensuring that cities and towns are reimbursed for any expenses incurred from state mandates. Because of this polling law, communities provided documentation of their additional polling costs to the division for review and certification.

As a result, all but one of the cities and towns in Massachusetts will share in the distribution. The funds range from \$114,744 for the City of Boston to \$82 for the Town of Monroe. The Town of Lincoln will incur no costs because it will use volunteer poll workers.

If you would like further information about this study, please contact Lenny Degnan at DLM at 727-0025.

## Legislative Update

**T**he following is a list of several bills currently pending in the Legislature that should be of interest to municipalities:

**House 14:** This proposal seeks to ensure that state agencies formally consider the local financial impact of proposed regulations by notifying the Division of Local Mandates of the cost impact of any new regulations. Such prospective cost determinations will help the promulgating agency to understand the cost implications of new regulations.

**House 5381:** This bill is a refile of the uniform procurement legislation of last year. It would require cities and towns to follow specific steps when purchasing goods or services. This is the House Ways and Means Committee redraft of H-139.

**House 1386:** This proposed legislation would prohibit more than three standees on school buses for a period not to exceed more than five consecutive school days in the event of an emergency.

**House 3333:** This bill, now in the Committee on Commerce and Labor, would require cities and towns to provide their employees with 18 consecutive days of

parenting leave. The proposal includes time necessary for adoptions and placement of adopted children. The bill has an appropriation of \$280,000.

**Senate 1650:** This bill would establish a program of grants to local governments for the purchase of upgrading infrared breath-testing devices and for personnel training costs associated with the use of this equipment.

### ***DLM Report***

*A publication of the Office of the  
State Auditor.*

**A. Joseph DeNucci**  
*Auditor of the Commonwealth*

Kenneth Marchurs, Deputy State  
Auditor for DLM

Tom Collins, Director of DLM  
Skip Sesling, Director of  
Communications

John Macdonald, Associate Director,  
Communications

Diane Szulc, Graphic Coordinator  
Gina Sferrino, Communications  
Specialist

Bob Gaumer, Editing  
Maureen Casey, Contributor

*Printed by Central Reproduction*



Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci, Auditor

### **Division of Local Mandates**

100 Boylston Street, Room 950  
Boston, MA 02116  
(617) 727-0980  
1-800-462-2678



MASS. SA 1.4: 789/1

✓

# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci  
Auditor of the Commonwealth

DOCUMENTS  
COLLECTION

MAY 15 1989

### A Connection Between State and Local Government

University of Massachusetts  
Depository Copy



Unfunded federal mandates pose a serious threat to the financial stability of our cities and towns. Faced with continually

escalating federal deficits, one of the first places for the federal government to effect budget cuts is in entitlement programs to states and local governments. This unfortunate scenario, coupled with our own state's revenue-raising restrictions, the Tax Cap and Proposition 2 1/2, creates a very serious problem - how to pay for vital and required services.

Environmental issues, including proper solid and hazardous waste disposal, water and air pollution control, and clean water are important to our health and safety. They cannot be postponed; they must be addressed now.

Last year's Solid Waste Act, which provides \$260 million to local governments for cleaning up, capping and closing

landfills, and siting of regional landfills, demonstrates the strong financial commitment of the Governor and the Legislature to help local governments deal with these problems.

Recent amendments to the federal Clean Waters Act and the Safe Drinking Water Act will greatly increase the responsibilities of local governments. However, federal funding for these initiatives is diminishing at the same time these federal mandates are expanding. This is not good news for local officials who must balance budgets.

Hopefully, current state legislative initiatives will provide some vital financial support to help address these environmental problems and, at the same time, help local governments comply with these federal and future state mandates. You can be assured I will continue to advance DLM's efforts to monitor future legislative initiatives and determine who should pay what for mandated programs.

*A. Joseph DeNucci*  
A. Joseph DeNucci  
Auditor of the Commonwealth

#### Inside This Issue

21 Communities Due Funding for Storage Tank Regulations ....	1
Tony D'Aiello	
GAO Releases Report on Legislative Mandates .....	3
Connie Gray	
Auditor DeNucci Meets Cape Area Treasurers/Collectors .....	3
Connie Gray	
Municipal Officials Visit DLM ..	3
Connie Gray	
Athletic Trainers Study Completed .....	4
Nick Maffei	
Paula Juliano Leaves DLM .....	4
Connie Gray	
DPH Restores Ambulance Monies .....	4
Tony D'Aiello	
Legislative Update .....	5
Phil Aube	
DLM Completes Study of New Precinct Law .....	6
Linda Costanzo	

## 21 Communities Due Funding for Storage Tank Regulations

Auditor A. Joseph DeNucci has determined that 21 cities and towns are entitled to \$160,298 in reimbursements from the Commonwealth for costs incurred or anticipated by their complying with the 1986 requirements of the Board of Fire Prevention Regulations (BFPR) for testing and removal of underground storage tanks (USTs).

In a statewide financial effect study just completed, the Division of Local Mandates projects \$2.8 million in state funding will be necessary to compensate all cities and towns that will be adversely impacted by the new regulations, 527CMR 9.18(2) for testing and 9.21(2) for removal.

The testing regulations require cities and towns owning underground tanks for storing gasoline and diesel fuel that do not meet the design requirements of the new regulations to test these containers for leakage in the 10th, 13th, 15th, 17th and 19th year after installation, and annually thereafter.

Continued on page 2.

## Storage Tanks

*Continued from page 1.*

Tanks on the premises of schools and other municipal buildings that hold fuel oil for heating are exempt from these testing requirements. However, tanks storing reserve fuel oil are subject to the regulations.

The removal regulations also mandate municipalities to empty, secure and remove any locally owned abandoned tanks or those out of service for 6 months. Abandoned tanks that cannot be removed must be emptied and refilled with inert material.

Under a pre-Proposition 2 1/2 law, costs resulting from the removal of leaking municipal tanks are the responsibility of the affected city or town.

DLM's cost projection was based on data submitted by a sampling of 25 municipalities, including the 21 petitioners and the City of Boston.

With assistance provided by DLM Regional Representatives, the municipalities that petitioned DLM completed financial effect statements detailing the age of the tanks in question, their contents and gallon capacity, whether testing or removal was required, the respective costs, and whether these expenses were incurred or anticipated.

Results showed, on the average, that each municipality, excluding Boston, owns six tanks over 10 years old used to store gasoline, diesel fuel or reserve heating oil, and that each container test costs approximately \$625.

Including Boston, projected statewide tank-testing costs will be \$1,134,829 annually. This figure has been adjusted to reflect that an estimated 56% of all these tanks are 20 years or older and must therefore be tested annually. The remaining 44% are between 10 to 19 years old and must be tested biannually.

DLM's study also indicates that almost every city and town, except Boston, must each remove at least two tanks

that have either been abandoned or out of service for 6 months. Given that private contractors charge approximately \$2,900 per removal, and including Boston's removal expenses, first year removal costs are estimated at \$1,647,309. Because tank removals may be a one-time obligation, future years' mandated expenses will most likely decrease.

Auditor DeNucci has written the Executive Office of Public Safety (EOPS), which has oversight of BFPR, requesting that the 21 cities and towns issued DLM determinations be compensated. The Auditor has also sought an EOPS commitment to assume all local costs due to the 1986 regulations.

Without such commitment, any municipality has the right, under M.G.L. c.29, s.27C(e) to petition Superior Court for an exemption from compliance until state funding is provided. DLM's determinations, issued under subsection (d) of section 27C of chapter 29, the local mandate law, are prima facie evidence of the amount owed in such court action.

Legislation filed this year, if enacted, could provide some funding for certain tank removal costs. Recently, DLM staff met with EOPS and DEQE officials and Representative Stanley Rosenberg (D-Amherst) to discuss his proposal to state-fund the removal of certain municipally owned tanks. However, another bill, S.921, could impose even more burdensome

tank requirements than currently exist. (See Legislative Update, page 5.) DLM will follow these initiatives and provide assistance as requested.

The Environmental Protection Agency (EPA) has also issued USTs regulations effective December 22, 1988. DLM research analysts are reviewing the federal requirements to determine whether they meet or exceed those imposed by the Commonwealth. Costs imposed by federal laws or regulations are generally exempt from the local mandate law. For additional information about these regulations, or to request copies, you may call EPA at 617-573-9604.

If you have comments or questions about this issue or need information about petitioning procedures, please call 1-800-426-2678 and ask for Lenny Degnan.



*Storage tank removal requires heavy equipment and time, costing approximately \$2,900.*



## Legislative Update

Since the Legislature adjourned (prorogued) on November 23, 1988, the following bills, still pending at that time, must be refiled for the 1989 session. (Their previous status, however, is noted.)

### Underground Storage Tanks

Three bills have been filed to address the current and past problems of underground storage tanks (USTs). (Article, page 1.)

**Senate 921** - *An Act Relative to the Protection of the Environment Through the Regulation of Storage of Oil and Hazardous Materials in Underground Tanks.*

S.921 is a comprehensive bill that allows the Division of Water Pollution Control within DEQE and the Board of Fire Prevention Regulations within the Department of Public Safety to totally control all aspects of USTs.

The Environmental Protection Agency (EPA) reports that tanks less than 20 years old have a 35% chance of leaking, and tanks over 20 years have a 57% chance of leaking. These alarming statistics should be of concern to all communities, especially those that rely on local groundwater supplies.

Under S.921, USTs will be regulated by creating standards for:

- leak detection and inventory control
- leak reporting requirements
- record keeping
- tank closure
- performance of new tanks
- guarantees by tank owners of their financial capability to clean up discharges and to compensate third parties in tort for bodily injuries and property damage.

Because this legislation affects communities, it should be read carefully for additional responsibilities.

**Status:** S.921 was reported favorably out of the Natural Resources and Agriculture Committee, but died in Senate Ways and Means. (Similar legislation filed for the last three years also received no final action.)

**House 5414** - *An Act to Further Protect the Groundwater of the Commonwealth.*

H.5414 will require DEQE through a municipal grant program to replace all underground storage tanks over 20 years old.

**Status:** H.5414 was attached to S.921 (see S.921).

**House 4723** - *An Act Relative to the Removal of Certain Underground Storage Tanks.*

This bill proposes to add one cent to the gasoline tax to assist cities, towns and individuals for removal of tanks over 20 years old.

**Status:** H.4723, heard before the Natural Resources and Agriculture Committee, was referred for study.



Auditor DeNucci meets with Senator Tom Norton (left) and Representative Albert Herren (right).

### Testing Breathing Tanks

**House 4286** - *An Act Relative to Testing of Air Used in Self-Contained Breathing Apparatus for Firefighters.*

This bill will require local fire departments to have the quality of air in their breathing apparatus checked at least monthly, whether or not they fill their own recharging cylinders. Air samples can be tested by a public health labora-

tory equipped for such tests or by a private testing laboratory. Complete specifications for breathing-air quality are detailed in H.4286.

The Committee on Public Safety has requested DLM to review this bill for mandate implications.

**Status:** Although the Public Safety Committee reported the bill out favorably, it was recommitted pending completed mandate determinations by DLM. (Early sampling of a few cities and towns indicates this will be a costly mandate for most communities.)

### Compensation of Town Clerks

**House 5867** - *An Act Further Regulating the Compensation of Town Clerks Who Serve as Registrar of Voters.*

This bill would increase the compensation that a city or town clerk may receive when serving as registrar of voters. Compensation will increase from the present \$50 to \$100 per thousand voters. The total amount cannot exceed \$2000. Another provision of H.5867, at local option, will allow compensation to be increased to \$4000.

The Committee on Local Affairs has requested DLM to review the section that will increase costs to communities.

**Status:** Although the Local Affairs Committee reported the bill out favorably, it was recommitted, pending DLM's review. (Because this bill will regulate compensation of municipal employment, it will need a 2/3's vote in both the House and Senate, as required by Article 115 of the Massachusetts Constitution, with cities and towns then assuming the costs. Failing a 2/3's vote, the Commonwealth either assumes the costs, or else it becomes a local option. DLM's preliminary cost determination, just released, is projected at over \$100,000.)

## DLM Completes Study of New Precinct Law

**D**LM has determined that Chapter 305 of the Acts of 1987 has imposed upon municipalities one-time costs of \$72,407 that should be state-funded under the local mandate provisions of M.G.L. c.29, s.27C. The law requires that new ward and precinct lines established according to the 1985 census be used in the March 1988 presidential primary.

Six towns (Bourne, Carver, Groton, Hopkinton, Plymouth and Sandwich) petitioned DLM for a determination. However, information obtained from the Secretary of State's Office indicated 59 other cities and towns also had to add precincts for the March 1988 presidential primary.

In the process of making a determination, DLM must establish three facts:

- 1) That the law took effect on or after January 1, 1981;
- 2) That the law imposed additional costs upon a city or town; and
- 3) That the General Court failed to provide by general law and by appropriation for the assumption of such costs.

DLM developed a cost claim form that was forwarded to the chief election officials of the 65 municipalities, requesting that they specify incremental personnel staffing expenses. The cost form requested the number of election workers per new precinct as well as hourly rates of pay.

New election personnel costs for compliance with Chapter 305 fell into the following categories: wardens, clerks, inspectors/checkers, constables or police officers, and others, such as custodians and ballot box operators.

DLM has certified costs and issued deficiency determinations for a total of \$6,330 to the six towns that petitioned the office. Because of the statewide mandate implications of Chapter 305, DLM also certified costs totalling \$66,077 for the 59 other affected cities and towns.

At this time, no appropriation has been made to pay for the expenses incurred by Chapter 305. However, Auditor DeNucci recommends that municipal officials urge their legislators to obtain a state appropriation to cover the additional costs.

### *DLM Report*

*A publication of the Office of the State Auditor (OSA).*

A. Joseph DeNucci  
*Auditor of the Commonwealth*

Kenneth A. Marchurs, Deputy Auditor  
for DLM

Thomas F. Collins, Director, DLM  
Skip Sesling, Director of  
Communications

### *CONTRIBUTORS*

Diane Szulc

Maria Kreeft

Bob Creamer

Daniel Shea

Ellen O'Connor

*Printed by Central Reproduction*



Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci, Auditor

### **Division of Local Mandates**

100 Boylston Street, Room 950  
Boston, MA 02116  
(617) 727-0980  
1-800-462-2678

Bulk Rate  
U.S. Postage  
**PAID**  
Boston, MA  
Permit NO. 55203



# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

RECEIVED

51989  
A. Joseph DeNucci  
Auditor of the Commonwealth

DOCUMENTS  
COLLECTION

### A Connection Between State and Local Government

## Mandated Health Benefits May Contravene State Constitution

In an action with potentially far reaching ramifications for Massachusetts cities and towns, the city of Cambridge, joined by the towns of Arlington, Easton, Framingham and Needham, and by Blue Cross-Blue Shield, has filed suit in Suffolk Superior Court against Attorney General James Shannon.

The suit seeks a court determination as to the validity of a series of state laws enacted in 1987 and 1988 that resulted in cities and towns having to provide additional medical insurance benefits to municipal employees. The plaintiffs claim these statutes are in violation of Article 115 of the Massachusetts Constitution.

Article 115, an amendment adopted by the voters in November 1980, specifically states: "No law imposing additional costs upon two or more cities or towns by regulation of the compensation, hours, status, conditions or benefits of municipal employment shall be effective in any city or town until such law is accepted by vote or by appropriation of money for such purpose, ...unless such law has been enacted by a two-thirds vote of each house of the General Court present and voting thereon, or unless the General Court, at the same session in which such law is enacted, has provided for the assumption by the Commonwealth of such additional costs."

The new benefits required by the Legislature include medical insurance coverage for cytologic and mammographic screening, infertility treatment, chiropractic services, Crohn's disease, ulcerative colitis and certain

primary and preventive health care services for children.

In an attempt to avoid the increased premiums resulting from these new services, Cambridge and Blue Cross-Blue Shield agreed to forego the additional coverage. Attorney General Shannon's office, however, interceded and threatened Blue Cross-Blue Shield with prosecution for failure to require that Cambridge accept and pay for the legislated programs. After repeated attempts at an out-of-court settlement, the plaintiffs initiated their action in Superior Court.

The plaintiffs' argument is that the new laws regulate the "benefits of municipal employment" and, therefore, must fulfill Article 115 requirements. Article 115 specifies that such laws must be enacted by a two-thirds vote in each branch of the Legislature or be funded by the Commonwealth in the same legislative session. The statutes in question were enacted by voice votes - without any recording of the actual number of votes in the affirmative and the negative. The court, therefore, will have to decide whether the voice votes satisfy the constitutional requirement of a two-thirds vote.

Cambridge petitioned DLM for a determination on this issue. However, DLM's position has been that laws affecting the benefits of municipal employment are not subject to the provisions of the local mandate statute, M.G.L. c.29, s.27C. While both Proposition 2 1/2 and Article 115 were approved by Massachusetts voters on the same date, Article 115 is a consti-

tutional amendment and the local mandate law is a state statute.

DLM contends that, as constitutional amendments supersede state statutes, cities and towns, when presented with questions on new laws impacting municipal employment benefits, must seek relief from state courts through Article 115.

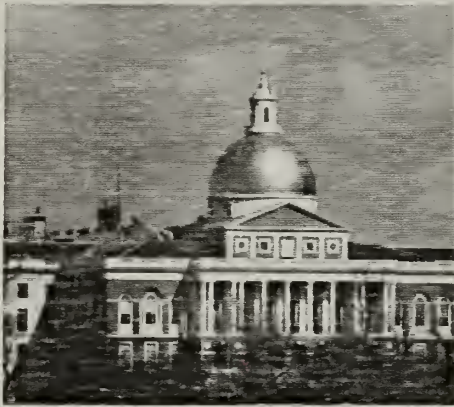
The Cambridge suit would serve to clarify many of the current questions over the breadth of the Legislature's power to require certain actions by cities and towns. Though DLM does not consider this controversy to be technically a local mandate issue, because of its close relationship to the local mandate law, DLM will continue to report on developments in the case. As the state courts have never ruled on an Article 115 question, the Suffolk Superior Court's decision is anxiously awaited.

### In This Issue

Mandated Health Benefits May Contravene State Constitution .....	1
<i>Ted Holden</i>	
State House News .....	2
<i>Phil Aube</i>	
Massachusetts Sunset Review Law .....	2
<i>Nick Maffei</i>	
Special Education Surveys .....	2
<i>Emily Lunceford</i>	
Recent Mandate Decisions .....	3
<i>Connie Gray</i>	



## State House News



To help prevent unfunded state mandates, Auditor DeNucci established a Legislative Review Program to monitor the many bills introduced each session of the General Court that may have a financial impact on cities and towns. The progress of these bills is tracked; when warranted, preliminary cost-estimation studies are conducted and provided to the appropriate committees of the Legislature for their consideration. Of the bills filed this year, DLM has identified the following as "potential mandates" (*shall*) or as impacting local government finances:

### Schools

**H.464 - School Bus Standees:** Standees would be reduced to only 3 in emergency situations.

**H.5514 - Teacher Certification:** This comprehensive bill outlines improved standards in teacher preparation and certification. Part of the bill addresses "mentor teachers" supervising provisionally certified teachers: mentors *shall* receive an appropriate stipend and adequate release time from regular teaching responsibilities.

**H.948 - Mandated Guidance Services:** Every city and town *shall* maintain a program of Guidance Counselling Services for all students. Such services *shall* be provided by public school guidance counsellors at a ratio no greater than 300 students per counsellor.

**H.1869 - Early Childhood Programs:** All public school systems would be required to provide early childhood education for children 3 and 4 years of age.

### Selectman/Councilor/Alderman

**H.2675 - Toxic and Hazardous Substances:** This comprehensive bill would require cities and towns to reduce use of toxic and hazardous waste substances.

**H.3886 - Levy Limit:** Debt service could be excluded from the levy limit by a 2/3 vote of town meeting or city council instead of by a majority vote in referendum. (Petition of MMA)

**S.1064 - Animal Control Officer Training:** S.1064 outlines minimum standards for training and would require every city or town animal control officer to be trained by the Criminal Justice Training Council.

### Personnel Benefits

**H.1006 - Insurance for Certain Surgery:** Coverage of expenses for breast reconstruction and surgery would be required by any and all blanket and general health policies.

**NOTE:** Many bills this year are adding increased medical coverage. DLM must consider them "potential mandates" in the event they are enacted by the 2/3 vote in both houses as required under Article 115. (See article on page 1.)

**H.3818 - Health Coverage:** This bill would change the amount a municipal employer contributes for an employee's health coverage from an amount equal to the dollar amount paid for the primary plan to an equal percentage. (Petition of MMA)

**H.3819 - Health Care Benefits:** Cities and towns could offer flexible benefits (cafeteria plans) within the language of Chapter 32B. (Petition of MMA)

## Special Education Survey

In the August 1988 DLM REPORT, Auditor DeNucci announced his study of Chapter 766, Massachusetts special education laws and regulations. The purpose of this study is to determine whether the statute, without sacrificing program quality, may be more economically and efficiently implemented. After reviewing data currently available from state sources, DLM has determined that further information is required to complete the study. Therefore, surveys are being developed to obtain more detailed sta-

### Massachusetts



Many state and local officials may not be familiar with Chapter 126 of the Acts of 1984. This Sunset Review Law, amending Chapter 11, section 6B of the Massachusetts General Laws, requires the Office of the State Auditor (OSA) through its Division of Local Mandates to periodically examine state laws and regulations that have a significant financial impact on cities and towns. The law also mandates the OSA to review all pre-Proposition 2 1/2 laws and regulations as well as those passed after 1981.

The statute defines a "significant financial impact" as one obligating municipalities:

- (1) to expand existing services,
- (2) to employ additional personnel, or
- (3) to increase local expenditures.

In addition, the Division is required to determine the costs and benefits of such laws or regulations to determine their effects on municipalities. DLM's findings, along with the Auditor's recommendations

*Continued on page 4.*



## Recent Mandate Decisions

tistics on special education populations, methods of service delivery and costs. This spring, school superintendents and executive directors of collaboratives will be selected and asked to complete a survey.

Understanding that school administrators already must fill out numerous complex reports each year, DLM designed the surveys to minimize the time and effort required for completion. We appreciate your cooperation and ask that you respond as thoroughly and promptly as possible.

### ets Sunset Review Law

that the laws or regulations be continued, modified or eliminated, are included in a Sunset Law Report to the Legislature.

Although the main purpose of Sunset Review is to require DLM to continually make these assessments of financial burdens on local governments, one of its auxiliary benefits is that state agencies, when informed of a DLM review, often begin their own analysis and updating. As a result, new regulations may be issued or corrective legislation filed to improve the effectiveness of existing statutes.

In January, Auditor DeNucci issued a Sunset Report on public school athletic trainers that recommended modifications to Chapter 677 of the Acts of 1982. Currently, DLM is conducting a comprehensive review of Chapter 766. (See article above.)

DLM is looking to municipal officials who deal on a daily basis with state mandates to suggest those that need to be eliminated, updated or modified.

If you are aware of any law or regulation that has a significant financial impact on your municipality, and which merits a review to assess its effectiveness, please call Nick Maffei, Sunset Program Manager, at 1-800-462-2678 or write to DLM. Your recommendations are welcomed.

### Funding Required

**S.1394:** This bill would establish specific timely payment of certain municipal contracts for the purchase of goods and services and would require municipalities to pay interest on overdue accounts. After reviewing the draft amendments, DLM concluded that this proposal would create a state mandate (to pay interest on overdue bills) that did not exist prior to January 1, 1981. (Petition of Senator John Houston, D-Worcester)

**DEQE:** "Draft Regulations for Recovering DEQE's Administrative Expenses at Hazardous Waste Disposal Sites" would charge cities and towns \$63.00 per hour for overseeing site cleanup. Auditor DeNucci has informed DEQE Commissioner Greenbaum and the Committee on Natural Resources and Agriculture that oversight charges would violate the local mandate statute. If DEQE regulations are not amended to exempt municipalities, the Auditor suggests that M.G.L. c.21E should be amended to prohibit DEQE from assessing cities and towns for oversight charges.

### No Funding Required

**DPW:** The state's decision to stop assisting cities and towns with data collection for posting speed limits is not a new mandate. The "Manual of Uniform Traffic Control Devices for Streets and Highways of Massachusetts", which places the responsibility on municipalities for collecting such information, was issued in 1978, prior to the local mandate law. DPW's cessation of a discretionary activity that had assisted cities and towns in the discharge of a municipal duty, therefore, does not contravene M.G.L. c.29, s.27C. (Petition of the Town of Warren)

**DEQE 310CMR 30:00:** These regulations are exempt from the provisions of M.G.L. c.29, s.27C because they impose *direct* costs only on private

scrap metal shredding companies. Although the regulations may have an adverse impact on municipalities, the costs are *indirect*. (Petition of the City of Lawrence)

**DEQE 310CMR 18:00:** These regulations concerning the disposal of trash at transfer stations were promulgated in January 1980; thus, they are exempt from the local mandate law, which applies only to any administrative or regulation taking effect on or after January 1, 1981. (Petition of the City of Lawrence)

**950CMR 56:00 et seq.:** These "Polling Place Accessibility for Elderly and Handicapped Voters" regulations are due to Federal Law 98435, The Voting Accessibility Act for the Elderly and Handicapped. Therefore, the costs incurred by cities and towns are not *directly* due to state regulations promulgated by the Secretary of State's Office. The local mandate statute requires state funding only when the costs are imposed at the state level. Cognizant of the problems, the Legislature enacted Chapter 437 in 1987 to allow cities to designate polling places in an adjacent precinct when it is determined that public convenience would be better served by such action. (Petition of the City of Peabody)

**AHERA (Asbestos Hazard Emergency Response Act):** The waiver provisions for state programs in Volume 52, No. 210 of the Federal Register do not apply since Massachusetts does not have an asbestos inspection and abatement program, and is not intending to implement a program in public schools that is as stringent as AHERA. Limited state funds are available to Massachusetts cities and towns for removal of asbestos from school buildings. For information, contact the Office of the Division of Occupational Hygiene at 617-727-3982.

For additional information about any of these determinations, please call Tony D'Aiello, Mandate Program Manager, at 1-800-462-2678.

## State House News

*Continued from page 2.*

### Police and Fire

**H.2752 - Supplemental Budget:** Part of the Governor's bill proposes to split 50-50 with the state all non-speeding fines. Presently, cities and towns retain all revenue from such citations.

**H.4258 - 15 Minute Cell Checks:** Each occupied cell in a lock-up facility would have to be checked physically or visibly at regular intervals, not to exceed every 15 minutes

**S.631 - Maintenance of Lock-ups:** Detainees in a lock-up facility *shall* be provided a nutritionally balanced meal at 7 a.m., noontime and 6 p.m.

**H.1798 - Binding Arbitration:** Binding arbitration would be reinstituted for police and fire.

**H.247 - Underground Fuel Storage Tanks:** While the intent of this bill is to comply with EPA regulations for test-

ing and removal of storage tanks, it appears to impose additional responsibilities with resulting costs for cities and towns.

### Clerks

**H.2988 - Voter Registration:** Any resident *shall* be eligible to register to vote in any city or town.

**H.1354 - Voter Registration:** Any resident could register to vote up to 4 p.m. on the last day before an election.

If you would like information about these bills or any legislative proposals that impact your community, please contact Phil Aube, Legislative Manager, at 1-800-462-2678.

### DLM Report

*A publication of the Office of the State Auditor (OSA).*

A. Joseph DeNucci  
*Auditor of the Commonwealth*

Kenneth A. Marchurs, Deputy Auditor  
Thomas F. Collins, Director, DLM  
Skip Sesling, Director of  
Communications

### CONTRIBUTORS

Diane Szulc  
Maria Kreeft  
Bob Creamer  
Daniel Shea

*Printed by OSA*

*If you would like to meet or talk with the DLM Representative for your city or town, call Field Services at 1-800-462-2678.*



Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci, Auditor

Bulk Rate  
U.S. Postage  
**PAID**  
Boston, MA  
Permit NO. 55203

### Division of Local Mandates

100 Boylston Street, Room 950  
Boston, MA 02116  
(617) 727-0980  
1-800-462-2678



# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci  
Auditor of the Commonwealth

### A Connection Between State and Local Government

GOVERNMENT DOCUMENT  
COLLECTION

FEB 8 1990

University of Massachusetts  
Depository Copy

## Auditor's Message

*As part of Proposition 2 1/2, the anti-mandate statute was enacted to insulate cities and towns from unfunded state initiatives. Now, more than ever, this provision is important to local officials. Already faced with the revenue-raising restrictions of Proposition 2 1/2, additionally compounded by the Commonwealth's fiscal problems - resulting in less state aid to cities and towns - local governments should not have unfunded state programs forced on them.*

*I urge you to contact my office if you believe any new state laws or regulations will have a direct financial effect on your municipality's budget. I also ask that you recommend for evaluation under our Sunset Review Program any older laws and regulations having a "significant financial impact" on local government. The Sunset Law, M.G.L. Chapter 11, section 6B, is designed to help local officials redirect limited resources by initiating the process to eliminate outmoded programs and to amend those that are not cost effective.*

*I invite the new local officials who are unfamiliar with the anti-mandate provisions of Proposition 2 1/2 and the Sunset Law to contact the Division of Local Mandates for information on how these laws work and how the OSA can be of assistance to you.*

*A. Joseph DeNucci*

## Health Mandate to Cost Cities and Towns \$3.2 M

**A**uditor DeNucci recently announced that Chapter 23 of the Acts of 1988, The Health Security Act, commonly referred to as the Universal Health Care Law, contains a state mandate in section 46 that will cost cities and towns approximately \$3.2 million annually.

Section 46 requires employers, including municipalities, with six or more employees to contribute one-twelfth of one percent of each employee's wages to a state medical security trust fund to be used to purchase medical insurance for the unemployed. The law, which becomes effective on wages paid after January 1, 1990, also establishes \$14,000 as the upper limit on wages subject to contribution.

The Auditor's ruling resulted from a petition by the City of Boston to the Division of Local Mandates (DLM) to determine whether the new law contravenes the anti-mandate provisions of Proposition 2 1/2, which require the Commonwealth to fully fund all new state laws and regulations imposing a financial obligation on cities and towns. Auditor DeNucci informed Mayor Raymond Flynn that the new law would cost Boston \$383,000 during the 1990 calendar year.

Because the General Court has not appropriated funds to pay the City of Boston for the costs associated with the Health Security Act, DLM determined that the law is subject to M.G.L. Chapter 29, section 27C (c), the anti-mandate statute.

Although the Auditor's ruling does not relieve Boston of the duty to comply with the law, DeNucci explained, "Cities and

towns may seek exemption from this unfunded state mandate in superior court." In such a court challenge, the State Auditor's determination is prima facie evidence of the cost imposed on any city or town.

In addition, in May the Legislature's Committee on Health Care requested that DLM study H.4711, a bill that would amend Chapter 23 to provide full reimbursement of all mandated costs to municipalities. In his letter to the committee, Auditor DeNucci estimated this trust fund section of Chapter 23 would cost the 351 Massachusetts cities and towns a total of \$3.2 million per year.

"Although I wholeheartedly support Universal Health Care, most cities and towns in the state are struggling under extremely tight financial constraints. This is no time to require them to spend funds they do not have. The local mandate statute was enacted to prevent precisely this type of fiscal imposition," said Auditor DeNucci. ■

### In This Issue

DEQE Cost Recovery .....	2
Program a Mandate	
Precinct Mandate Funded .....	2
Recent Determinations of .....	2
the Mandate Research Program	
State House News .....	3
Auditor DeNucci Visits .....	4
Local Officials	

## DEQE Cost Recovery Program A Mandate

New regulations, which went into effect July 1, 1989, allow DEQE [now called the Department of Environmental Protection (DEP)] to bill individual property owners, businesses, and municipalities \$45 per hour for the agency's supervision, in addition to the actual cleanup costs, of hazardous waste sites.

The Division of Local Mandates has determined these new regulations will impose additional costs on cities and towns and will contravene the anti-mandate provisions of Proposition 2 1/2.

Chapter 21E, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, passed by Chapter 7, section 5 of the Acts of 1983, directs DEP to ensure that all assessments of releases (or threats of releases) and cleanups of oil and hazardous materials protect the health, safety, and welfare of the public and the environment. The law also requires those who are statutorily liable for such releases to pay all costs of assessment, containment and removal.

DEP's position is that it must oversee cleanup actions at all sites, even when reliable contracted parties are performing the cleanups. Under this new program, DEP intends to recover supervisory and agency overhead costs such as office supplies, telephones, equipment rental, field and lab equipment, training, maintenance and repair.

Auditor DeNucci expressed his concern about these new regulations, saying, "The direct cost of cleanup is clearly the obligation of any potentially responsible party (PRP); however, asking PRPs to pay indirect overhead costs in addition to supervisory costs is going too far."

DEP has currently identified approximately forty city and town hazardous waste sites. Since the time required to assess and oversee cleanups averages from 800 hours for a low priority site to 8,000 hours for a high priority site, the cost to the forty cities and towns will approach several million dollars. Furthermore, future identification and assessments of additional municipal sites are probable. ■

## Precinct Mandate Funded

In the January 1989 issue of this newsletter, the Auditor announced that DLM had completed its study of Chapter 305 of the Acts of 1987. This law, which required that new ward and precinct lines (established according to the 1985 census figures) be used in the March 1988 presidential primary, was determined to be a new state mandate that should be funded in accordance with the provisions of M.G.L. c.29, s.27C.

Acceding to the Auditor's recommendation, the General Court funded the \$72,407 deficiency when it passed the FY 1990 State Budget. During the budget debate, Representative Daniel J. Ranieri (D-Bellingham) successfully moved that the budget be amended by appropriating \$72,408 to reimburse cities and towns for the costs of complying with Chapter 305.

Auditor DeNucci, when informed of the funding, announced, "I am pleased the General Court has fulfilled its responsibility to fully fund this new mandate. Municipalities who implement new state programs should be reimbursed for their costs."

*Continued on page 4.*

## Recent Determinations of the Mandate Research Program

### No Funding Required

**DEQE 310CMR 7:15:** These regulations specify the requirements and procedures for removing and disposing asbestos-containing material during demolition/renovation projects, such as in schools. The removal costs, however, result from requirements in federal regulations, 40 CFR61 subpart M, the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAPS) that have been in effect since 1976. (Petition of the Town of Rockport)

**S.631:** This bill would require nutritionally balanced meals to be served at 7 a.m., 12 noon, and 6 p.m. to persons com-

mitted to a court or police lockup. Because the U.S. and Massachusetts constitutions already prohibit cruel and unusual punishment, S.631 would merely codify a pre-existing legal duty of municipalities to provide adequate food and medically necessary drugs to pre-trial detainees and would not be a new mandate. However, the bill also would require detailed record keeping of detainee meals. To the extent that this activity causes more than incidental costs, the mandate statute would be applicable. (Petition of Representative Paul Kollios, D-Millbury) S.631 has been redrafted and filed as S.1862. The strict record keeping requirements and time tables for meal services are eliminated.

### Funding Required

**M.G.L. Chapter 21G:** Chapter 592 of the Acts of 1985, the Water Management Act, was signed by the Governor on December 18, 1985, four years after Proposition 2 1/2 went into effect. Prior to Chapter 592, DEP had no explicit authority to order installation of water meters. As a result of Chapter 592, now M.G.L. c. 21G, DEP is now requiring the City of Westfield to install meters on all water hook-ups as a condition of approval of a water emergency declaration. Therefore, the city must purchase and install 8,700 water meters on commercial and residential water service connections. DLM estimates the additional cost imposed on Westfield would be approximately \$2.1 million. (Petition of the City of Westfield)



## State House News

### *Bills being tracked by DLM of importance to local government:*

**S.113:** This bill, which would extend workers' compensation coverage to teachers, makes school systems liable for personal injuries sustained on the job by teachers. Senate Ways & Means released the bill with a favorable report.

**H.5900:** This Uniform Procurement bill, sponsored by the Inspector General, would establish a set of basic procurement procedures for county and local governments. The intent is to foster competition and provide safeguards against waste, fraud and abuse. It has been engrossed in the House and is in the Senate Committee on Counties.

**H.1536:** This bill, The Election Law Recodification Act of 1988, would recodify M.G.L. Chapters 50-57, which cover all the provisions of elections including voters, political committees, disclosure of campaign expenses, and apportionment of congressional and senatorial districts.

**H.2101 and H.2121:** These two bills would establish a job-related cancer

presumption for firefighters. H.2121, in addition, would make the law a local option and would extend the job-related presumption to five years after service termination. Both H.2101 and H.2121 are in the House Public Service Committee pending a review by DLM.

**H.5514:** This bill revises teacher certification requirements, giving the Board of Education authority to grant provisional certificates to allow the holder to teach for a maximum of 5 years. A full certificate would require a Masters Degree plus field-based clinical experience under mentor teachers. DLM is concerned about the part of Section 2 stating that mentor teachers *shall* receive an appropriate stipend and adequate release time from regular teaching responsibilities.

**H.6153:** A redraft of H.3413, this bill would reclassify real property used for a child care facility as residential.

**H.4711:** This bill, in the Joint Committee on Health Care, would fully reimburse cities and towns for the medical security trust fund mandate in section 46 of the Universal Health Care Law. (See article on page 1)

### *Laws recently enacted of importance to local government:*

**Chapter 144, An Act Relative to School Records of Missing Persons:** requires notice of a missing child to be sent to the last known elementary or secondary school and the school to report any requests for the child's records to an appropriate law enforcement agency.

**Chapter 171, An Act Relative to the Removal of Asbestos from Municipal Buildings:** amends Chapter 44, s.7 by adding a new clause that allows cities and towns to incur debt payable within 10 years for the purpose of removing asbestos from municipally owned buildings.

**Chapter 173, An Act Relative to Posting Notices of Examinations:** makes the city or town clerk responsible for the posting of civil service notices.

**Chapter 175, An Act Relative to Intermittent or Reserve Police and Fire**

**Forces:** requires appointments to the regular police or fire force to be made from among the permanent members of the reserve police or fire force.

**Chapter 176, An Act Relative to the Transportation of Certain School Pupils:** amends Chapter 90, s.7D to exempt individuals and vehicles used to transport no more than 8 students to athletic or extracurricular events.

**Chapter 178, An Act Further Regulating High School Voter Registration:** requires the principal or headmaster of every public and private high school to submit to the Board of Registrars the names of at least 3 school employees who are registered Mass. voters to act as assistant registrars of voters.

**Chapter 194, An Act Relative to Voter Registration for New Citizens:** permits a person who becomes a citizen after the final day of registration to appear before a Registrar in the city or town of his legal residence during business hours on any day before a primary or election to register to vote.

**Chapter 204, An Act Establishing a System of Adjudicating Parking Violations by Mail:** allows a person to challenge the validity of a parking violation by mail rather than by a personal appearance before the parking clerk.

**Chapter 227, An Act Providing for Drug Free School Zones:** allows anyone who possesses, distributes or sells drugs within 1000 feet of school to be arrested and imprisoned.

If you would like information about any bills or a copy of any of the above or other recently passed acts, please call Phil Aube, Legislative Coordinator, at 1-800-462-2678. ■

**H.5546:** A redraft of S.282, H.4079 and H.4208, this bill would impose costs upon cities and towns by requiring all public high schools, including voc-techs, to provide every student with an opportunity for school-based public service. Additional costs could also arise from student transportation and significant administrative expenses. (Petition of Senator William Golden, D-Weymouth)

**S.1064:** This bill mandates a training and certification program, under the direction of the Criminal Justice Training Council, for animal control officers. DLM estimates that first year statewide municipal costs would total \$283,920, and that subsequent year expenses would be \$26,000. (Petition of Representative Christopher Hodgkins, D-Lee)

If you would like additional information about any of these determinations, please call Tony D'Aiello, Mandate Research Program Manager, at 1-800-462-2678. ■

If you would like to meet with the DLM Representative for your city or town, please call:

Field Services at

1-800-462-2678

## Auditor DeNucci Visits Local Officials

Auditor DeNucci has been traveling to Massachusetts cities and towns to meet with community leaders to discuss how the Division of Local Mandates can help municipalities maintain programs and services during the state's financial difficulties.

During March the Auditor met with Mayor Jordan Levy of Worcester to listen to his concerns about the current fiscal climate and the spiraling costs of public education. Under the Sunset Law, the Division of Local Mandates is reviewing Chapter 766, the Special Education Law. The Auditor said he hopes, by recommendations making Chapter 766 more effective, to ease the financial burden on Worcester and all cities bearing the costs of state-mandated special education. Said Auditor DeNucci, "Cost savings may come in the areas of transportation and mainstreaming special education students into regular classrooms. We are looking to make the law more effective."

In April, the Auditor visited Mayor Peter Torigian of Peabody who gathered officials from five city departments to examine current problems of local government. While discussing mandate problems, the Mayor noted the growing

state role in implementing federal mandates. Auditor DeNucci explained that, if the state has a law stricter than that of the federal government, then, to the extent that state requirements exceed those of the federal mandate, the state would be responsible for the incremental costs of implementing that law.

On June 22, Auditor DeNucci spoke before the Massachusetts Town Clerks Association at their Annual Spring Conference in North Falmouth: "I am grateful for these opportunities to meet with local officials and to hear first-hand what their problems are. Knowing their concerns enables me to effectively provide the services they need from DLM." DeNucci said he likes to visit local officials in their communities to "get a feel for what they're dealing with."

In addition to the Auditor's visits, DLM staff members meet regularly with local officials. If you would like a DLM spokesperson to make a presentation before your association, regional meeting, board of selectmen, city council, or school committee, please call Arthur DeCoursey, Field Services Program Manager, at 1-800-462-2678 or speak to your Regional Representative. ■

## Mandate Funded

*Continued from page 2.*

Although only six towns (Bourne, Carver, Groton, Hopkinton, Plymouth and Sandwich) petitioned DLM for a deficiency determination, fifty-nine other municipalities were also affected.

DLM is currently working with the State Treasurer's Office to distribute these funds. ■

### *DLM Report*

*A publication of the Office of the State Auditor.*

A. Joseph DeNucci  
*Auditor of the Commonwealth*

Kenneth A. Marchurs,  
*Deputy Auditor*

Thomas F. Collins,  
*Director, DLM*

Skip Sesling,  
*Director of Communications*

### *CONTRIBUTORS*

Connie Gray  
Diane Szulc, Maria Kreeft  
Bob Creamer, Daniel Shea



Office of the State Auditor  
Division of Local Mandates  
A. Joseph DeNucci, Auditor

### **Division of Local Mandates**

100 Boylston Street, Room 950  
Boston, MA 02116  
(617) 727-0980  
1-800-462-2678

Bulk Rate  
U.S. Postage  
**PAID**

Boston, MA  
Permit NO. 55203



# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci  
Auditor of the Commonwealth

### *A Connection Between State and Local Government*

GOVERNMENT DOCUMENTS  
COLLECTION  
JUL 19 1990  
University of Massachusetts  
Depository Copy

## Auditor DeNucci Releases Education Mandate Ruling for Worcester

*Decision has statewide implications*

In response to a petition by Mayor Jordan Levy of Worcester, Auditor DeNucci on May 10, 1990 released a DLM determination that certain education laws and regulations are state mandates. DLM found these post-Proposition 2 1/2 state laws and regulations have increased the costs to cities and towns providing public education by an estimated \$34 million statewide over the past four years.

The state laws and regulations cited in DeNucci's determination require municipalities to provide:

- Basic skills testing of public school students. Estimated statewide cost: \$9.3 million.
- Expanded special education services for preschool pupils. Estimated statewide cost: \$3.2 million.
- Notification to parents who have "at risk" children of their right to a special education evaluation of their children. Estimated statewide cost: \$3.9 million.
- Review of physicians' health assessment reports by school nurses and the entry to those assessments of any pertinent information from school health records. Estimated statewide cost: \$0.9 million.
- Foreign language courses for high school students. Estimated statewide cost: \$16.9 million.

The Basic Skills Testing program, M.G.L. c. 15, s. 50 and Department of Education (DOE) regulation 603 CMR 30.00 (created by Chapter 188 of the Acts of 1985) was designed to identify those students needing assistance, but has not been funded by any state appropriation since its inception.

DOE regulation 603 CMR 28.103, which was amended in 1986, expands special education services to three- and four-year-old children who have any condition that would interfere with their future educational growth and development.

The DOE regulation that requires school principals to notify parents of their right to have their "at risk" children referred for special needs evaluations, 603 CMR 28.315.1, took effect in September 1986. This amended regulation imposes additional costs because it now requires principals to promptly notify parents in writing of their right of referral if any one of four conditions exists for their children, and if such referrals are being made.

Another DOE regulation, 603 CMR 28.319(a), requires physicians' health assessment components of special needs evaluations to be reviewed by school nurses, and any pertinent information from the children's school health records to be added. These additional duties for school nurses impose costs of time- and record-keeping.

The final mandate, which requires schools to provide foreign language courses for high school students who plan to attend public college, was added in January 1984 when the Board of Regents set new minimum eligibility requirements for public institutions of higher learning.

Last year, the City of Worcester filed suit against the state, alleging that the city was being shortchanged by the state's local aid formula and that the state was violating Proposition 2 1/2 by imposing mandates without funding. Over 100 cities and towns have supported Worcester's suit with friend-of-the-court briefs.

As this matter proceeds through the courts, DLM will keep municipalities informed of the progress and any substantive outcomes. ■

### In This Issue

Norfolk Landfill Decision .....	2
Reversed by SJC	
Universal Health Care .....	2
Assessment Deferred for Cities and Towns	
Out-of-Town Voter .....	3
Registration a Potential Mandate	
State House News .....	4



## Norfolk Landfill Decision Reversed by SJC

On April 11, 1990, the Supreme Judicial Court (SJC) handed down its decision reversing a 1988 Superior Court finding in which Judge Welch had decided the Commonwealth must pay the Town of Norfolk \$144,000 for a liner to prevent groundwater pollution by expansion of its landfill.

The Norfolk case goes back to 1985 when DEQE, now the Department of Environmental Protection, required the town to install an impervious liner in an expansion of its landfill. At the time, the town challenged the DEQE requirement under the local mandate law.

The SJC decided that Norfolk was not exempt under the local mandate provision of Proposition 2 1/2 (Chapter 29, s.27C) from the cost of installing an impervious liner. "Though Proposition 2 1/2 exempts cities and towns from a rule or regulation ... which shall result in the *imposition* of additional costs, the word *imposition* connotes compulsion and involuntariness."

The SJC's primary reason for rejecting the mandate argument was that municipalities are *not required* to operate a landfill by statute or regulation; a majority of municipalities, in fact, use privately owned and operated commercial landfills. Therefore, Norfolk was not subject to any form of *imposition*, according to the court. By operating a landfill, the Towns of Norfolk, Hull, and Boxford are voluntarily choosing "to participate in a heavily regulated industry" and are "subject to the same conditions and costs as are accepted by a private party engaged in the same activity."

The court went on to state, "We do not think that Proposition 2 1/2 can be construed to exempt municipalities from compliance with generally applicable environmental regulations which result in *indirect* costs to those municipalities engaging in voluntary activity."

Noted Auditor DeNucci, "This decision is not good news for cities and towns, and raises important questions

about the anti-mandate statute. It is clear the court has decided that solid waste disposal is an area where municipalities are not protected by the mandate statute. The court has formulated a conclusion that activities a municipality voluntarily opts to perform, and that can be reasonably obtained through the private sector, are not subject to the mandate law."

Because of this court decision and the growing concern over the fiscal constraints that cities and towns are facing, MMA Executive Director Sheila Cheimets recently met with Auditor DeNucci to discuss potential legislative proposals to strengthen the mandate statute. Based on the meeting, the MMA intends, with the assistance of Auditor DeNucci, to file a bill in the next legislative session. ■

## Universal Health Care Assessment Deferred for Cities and Towns

This past January, the Department of Employment and Training (DET) notified municipalities they were expected to begin paying in calendar year 1990 a new quarterly contribution as mandated by section 46 of Chapter 23 of the Acts of 1988, the Universal Health Care Act. The state assessment on all employers, including municipalities, requires twelve hundredths of one percent (.0012) of the first \$14,000 of each employee's wages to go to the Medical Security Trust Fund to pay medical benefits for unemployment insurance claimants. Last year, when the law was enacted, Auditor DeNucci determined that this assessment was a new mandate on cities and towns. DLM estimated the first year's statewide municipal costs would be \$3.2 million.

The Field Service Regional Representatives of DLM are always ready to meet with local officials to explain the Local Mandate Law, Chapter 29, s. 27C, and to provide information about pending legislation that might have a financial impact on their communities.

Auditor DeNucci noted, "As a result of annual town elections, there are many new officials who are unfamiliar with the Local Mandate Statute. I encourage you to call DLM at 1-800-462-2678 to set up an appointment with your assigned Regional Representative to work with you on any mandate issue. DLM is also willing to provide a staff member to address any local association about state mandates."

\*\*\*

To help DLM keep its mailing list current, we ask each City and Town Clerk, after the municipal elections, to please send us a copy of the ballot with the winners checked. We would also appreciate it if you would advise us of the newly elected chairman or president of your:

- Board of Selectmen, Aldermen or City/Town Council
- School Committee
- Board of Health
- Board of Assessors

The Auditor, in response to the many inquiries received from cities and towns concerning the notice from DET, immediately issued a memorandum restating his position that section 46 imposed new costs on municipal employers and is therefore subject to the local mandate statute. In his letter, Auditor DeNucci advised, "Unless a legislative solution is approved early in the current legislative session, cities and towns must either pay the mandated assessments or petition Superior Court to be exempted from complying with this state-imposed cost."

DLM has been processing municipal petitions to ascertain the specific costs for each municipality and has issued 68 determinations. Meanwhile, Shrewsbury and Lexington have proceeded with a petition to Superior Court to have Shrewsbury, Lexington and 18 other cities and towns exempted from the provisions of section 46.

The Commissioner of DET, James French, in response to the Auditor's determination, and in an attempt to head-off the Lexington suit, sent a letter to cities and towns in early March stating that the "Secretary of Administration and Finance has determined that the liability of cities and towns for the unemployment health insurance contributions is subject to the Commonwealth's local mandate statute." Therefore, "DET will not take any action to enforce the liability of cities and towns for unemployment health insurance contributions. The Administration intends to seek necessary funding to cover the additional costs to the cities and towns imposed by these contributions during FY 1990." Cities and towns need only file their Quarterly Health Insurance Reports for 1990 so that DET will be able to accurately calculate what the contribution *would have been*.

## Out-of-Town Voter Registration

Auditor DeNucci has ruled that Chapter 567 of the Acts of 1989 (M.G.L. c. 51, s. 42F), could become a new state mandate for some municipalities with large numbers of out-of-town workers or students. Until Chapter 567, municipal registration officials were required, since 1984 under G.L. c. 51, s. 42B, to register out-of-town residents only at a registration session held pursuant to a petition from ten or more voters of that city or town.

Chapter 567 now allows Massachusetts citizens to register to vote in *any* city or town during *any* registration session conducted by local elections officials or during regular municipal office hours. This change could impose direct new costs on certain communities in the form of increased administrative expenses.

As a result, and in keeping with the state funding provisions of Chapter 29, section 27C, the Secretary of State's Office has informed DLM that it will consider seeking an appropriation to reimburse documented expenses for those municipalities that experience more than incidental administrative costs in implementing Chapter 567.

DLM advises affected cities and towns to maintain a separate record of the personnel and postage expenses they incur both to register out-of-town voters and to forward the completed registration forms to the Registrar of Voters in the communities where the registrants reside. This record would serve as documentation of mandated costs imposed, should the Legislature provide funding for this new law. It would also provide DLM with necessary cost data, should any city or town petition the Division for a deficiency determination under subsection [d] of the local mandate law.

Although unable to precisely identify the statewide fiscal impact of this new law, DLM has sampled 25 communities, including several that host colleges and universities. Most Registrars of Voters surveyed project that anywhere from 30 (Bellingham) to 400 (Easton, Adams) to as many as 1,000 or more (Quincy, Milton, Worcester, Boston) potential voters who work or attend school in their communities, but who reside elsewhere in the state, will annually take advantage of this new opportunity to register to vote. Also, those surveyed estimate that, due to Chapter 567 compliance, added personnel and postage costs of between \$1.00 to \$2.00 per out-of-town registrant will result.

The Town of Milton has already filed suit against the Commonwealth in Norfolk Superior Court, requesting to be exempt from Chapter 567 until state funding is provided. DLM is following this court challenge and will apprise all cities and towns of its outcome. ■



# MUNICIPAL MANDATES

section 1

*A guide to the mandate provisions of proposition 2 1/2*

## What is the Municipal Mandates Guide?

In these times of fiscal stress, local officials are struggling with many mandates. Mandates emanate from the federal government and the state government. Fortunately, in Massachusetts, we have a means for local government to cope with municipal mandates that emanate from state government.

These information sheets, which the Division of Local Mandates will be developing, will form a Municipal Mandates Guide to assist new and experienced local officials with the mandates provision of Proposition 2 1/2. *Please save, copy and share this information with your associates and committee members.*

If you have any questions about  
mandates, call DLM at  
1-800-462-COST

## What is the Local Mandate Law?

Proposition 2 1/2 contains a provision to protect cities and towns from unfunded state initiatives. M.G.L. Chapter 29, section 27C, subsections [a] - [g] provides that when the state passes a new law, rule or regulation, that imposes more than "incidental" obligations on local communities, it is a mandate that must be either state-funded or that permits local option compliance. The Division of Local Mandates (DLM) within the Office of the State Auditor was also established at this time to determine the cost impact of new mandates.

## When does the Local Mandate Law apply?

- When the source of the mandate is a *state* law, rule or regulation and the Legislature has not provided, by General Law and appropriation, for state assumption of local implementation costs.
- If the law, rule or regulation, or amendment to such, is enacted or promulgated after *January 1, 1981* and requires a city or town to spend additional revenues or provide additional services.
- If it is a city or town that is affected by the mandate, NOT a regional school district, a county system, or a regional authority, which are not protected from the costs of new mandates.
- If the new mandate imposes *direct*, NOT indirect, costs such as the regulatory costs imposed on commercial enterprises that are indirectly passed on to customers, including municipalities.
- If the new mandate is NOT the result of a *court decision*.
- If the new mandate or amendment does NOT permit *local option compliance*.
- If the new mandate is NOT a federal pass-through mandate, such as the EPA regulations affecting safe drinking-water standards.
- If the new mandate does NOT regulate compensation, hours, status, conditions or benefits of *municipal employment*. (Article 115 of the State Constitution. However, no funding is required for such laws passed by a 2/3s vote of both the House and Senate.)

## What can you do if you think the Local Mandate Law applies?

- Petition DLM for a deficiency determination as soon as possible before the mandate goes into effect.
- Implement the new mandate and petition DLM when the costs are discovered.
- Go directly to Superior Court for an exemption from compliance as provided in subsection [e] of the law.

## Who can petition DLM?

- Any legislative committee or either branch of the General Court.
- The Chief Executive Officer of a city or town. (mayor, manager, etc.)
- The Board of Selectmen, the Board of Aldermen, Town Council, or City Council.
- The Superintendent or School Committee of a city or town.

## When the Auditor issues a mandate determination in your favor, what are your options?

- Seek a legislative solution: ask your representative or senator to pursue state funding or local option language.
- Seek an exemption from the statute or regulation in question in Superior Court.
  - Only Superior Court can declare a law ineffective in any city or town.
  - A DLM determination is *prima facie* evidence in Superior Court.
- According to subsection (e), any ten taxable inhabitants of any city or town in a class action suit may also petition Superior Court alleging the deficiency of state monies to reimburse cities and towns for actions covered by subsections (a), (b), and (c).

## How do you petition DLM?

- Address a letter to:  
The Honorable A. Joseph DeNucci  
Auditor of the Commonwealth  
100 Boylston Street, Room 950  
Boston, MA 02116
- Cite the new law or regulation imposing costs and the nature of the impact on your community. Provide cost data, if possible.
- State your request for a DLM determination of the fiscal impact of this new mandate under the provisions of Chapter 29, s. 27C.
- See sample letter.

## Sample letter

The Honorable A. Joseph DeNucci  
Auditor of the Commonwealth  
100 Boylston Street, Room 950  
Boston, MA 02116

Dear Auditor DeNucci:

The Board of Selectmen of the Town of Ripton requests a determination in accordance with M.G.L. Chapter 29, section 27C(d), as to whether or not Chapter 23 of the Acts of 1988, the Health Security Act, is a new municipal mandate.

Section 46 of this act requires the town, beginning in 1990, to contribute twelve hundredths of one percent of the first \$14,000 of each employee's wages to the Medical Security Trust Fund. Estimated costs for the first year would be \$10,850 for our town.

For additional information about the impact of this law on Ripton, please contact our Town Accountant, Sam Bottomline, at 508-444-1111.

Thank you for your assistance in this matter.

Sincerely yours,

Ripton Board of Selectmen





## State House News

**H.5934** (formerly **H.5626**) - Supplemental Appropriation: Line Item 1599-0013 asks for \$2,520,000 for the Executive Office for Administration and Finance to pay into a reserve fund for cities' and towns' unemployment health insurance contributions due under section 46 of Chapter 23 of the Acts of 1988. This reserve would cover the estimated amount owed by each city and town for 1990. H.5934 has been engrossed and sent to the Senate where it is now S.1711.

**H.4391** - This bill, which would require the Commonwealth to reimburse any city or town for the full cost of any expense due to the passage and implementation of the Medical Security Trust Fund section of Chapter 23 of the Acts of 1988, has been put into study by the Committee on Health Care. So far, legislation to reimburse cities and towns for expenses due to the Universal Health Care Act has not been favorably acted on.

**H.5129** - This bill would exempt municipalities from Chapter 21E, section 3A, the Timetables and Specifications for Action at Disposal Sites assessment process, the result of a November 1986 referendum question. This section requires the Department of Environmental Protection (formerly DEQE) to establish lists of all disposal sites and potential sites and to

develop a Mass. Contingency Plan for funding and action. The bill has received a favorable report from the Committee on Natural Resources.

**H.3473** - This bill would allow school employees to perform the functions of athletic trainers without being so licensed. The Committee on Education, Arts and Humanities amended this bill to allow applicants for an athletic trainer's license to be given hiring priority over employees without a license. The bill is now on the Senate calendar.

**H.3634** and **H.1260** - Both these bills would require Boards of Assessors to abate unpaid real estate taxes on property purchased by, or donated to, housing authorities for a certain time period of ownership by the authorities. The time period and corresponding tax liability could exist for both the remainder of the fiscal year in which the property is purchased and the fiscal year following, if the property is purchased after January 1, the lien date for the next fiscal year. Last year DLM determined this would be a new mandate because there would be a loss of tax revenue to a municipality, which would be charged to the overlay account. The bills, combined as H.1260, have been ordered to a third reading in the House.

**H.5701** - The House, by amendment, inserted \$863,298 in the FY 1991 budget to pay cities and towns for their extended polling hours in the September and November state elections. H. 5701 has been engrossed and sent to the Senate.

**H.4256** - The Senate has adopted an amendment that would require the state to pay any costs impacting local communities from this firefighters' cancer presumption bill. The bill was engrossed and sent to the House ■

### DLM Report

*A publication of the  
Office of the State Auditor*

A. Joseph DeNucci  
*Auditor of the Commonwealth*

Kenneth A. Marchurs  
*Deputy Auditor*

Thomas F. Collins  
*Director, DLM*

Zvi A. Sesling  
*Director of Communications*

#### CONTRIBUTORS

Connie Gray,  
Diane Szulc, Maria Kreeft,  
Tony D'Aiello, Phil Aube



Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci, Auditor

State House Library (7)  
ATTN: Serial Records  
Room 442, State House  
Boston, MA 02133

#### Division of Local Mandates

100 Boylston Street, Room 950  
Boston, MA 02116  
(617) 727-0980  
1-800-462-2678

Bulk Rate  
U.S. Postage  
**PAID**  
Boston, MA  
Permit NO. 55203

#### Route to:

- ☒ Legal counsel
- ☒ Accountant/Auditor
- ☒ School Committee Chairman
- ☐ \_\_\_\_\_



# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci  
Auditor of the Commonwealth

### *A Connection Between State and Local Government*

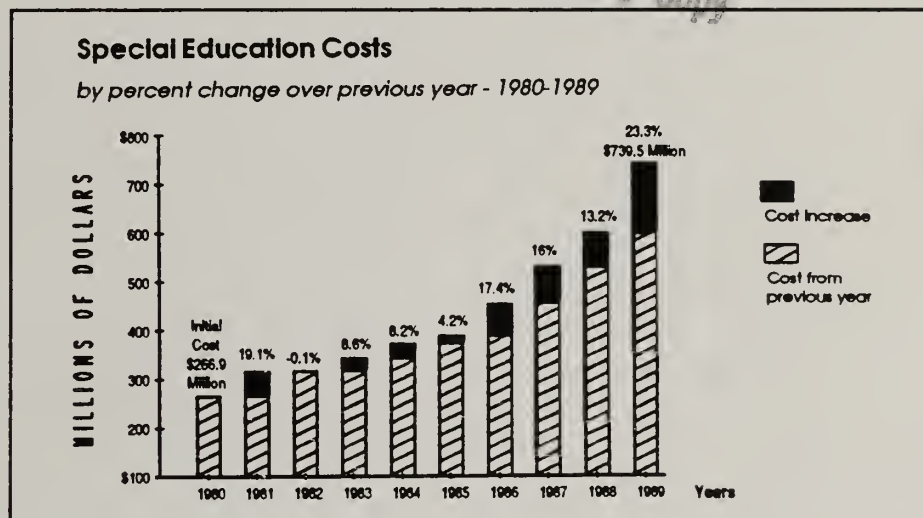
GOVERNMENT DOCUMENT  
COLLECTION  
NOV 5 1991  
UNIVERSITY OF MASSACHUSETTS  
DEPOSITORY COPY

## Auditor's Special Education Study Recommends Major Reforms and Increased Mainstreaming

On March 27 Auditor A. Joseph DeNucci issued the results of the Division of Local Mandates' (DLM) comprehensive study of the Commonwealth's Special Education Law, Chapter 766. The report contains 41 recommendations and calls for a major restructuring of how the state delivers educational services, including special education.

The most significant recommendation calls for a statewide major initiative to integrate or mainstream special education students into the regular classroom to the maximum extent appropriate. The report stresses that, for increased mainstreaming to be successful, steps must be taken to revitalize regular education programs. Two important strategies to accomplish this goal include changes in teacher certification and increased training for current regular classroom teachers. Also necessary for successful mainstreaming is restoration of regular classroom support services, including teachers' aides, remedial programs, and counseling services, as well as implementation of incentives and rewards for teacher excellence.

The report shows that the cost of the program has gone beyond what was intended by the Legislature in 1972, when Chapter 766 was enacted. DeNucci said, "While the program has been successful beyond expectation in enabling children with special needs to reach their full academic and



vocational potential, it has created an expensive and increasingly separate educational system, depriving many children of the opportunity to participate in regular school programs."

Another important recommendation is for state and local officials to aggressively pursue third-party insurance reimbursements, including Medicaid, for related services provided as part of a child's special education program. This reimbursement opportunity could generate \$40 to \$50 million per year which should be retained by local school districts.

Despite a statewide decline in public school enrollment over the past 10 years, the report shows that special education enrollment has continued to increase and program costs have risen dramatically, far outpacing inflation. Between 1979 and 1989, public

school enrollment statewide declined by 17% while special education enrollment continued to increase by 6%. Total spending in 1980 was \$267 million, compared to \$740 million in 1989, a 177% increase. More revealing is the 90% increase in program costs over just the last five years, from \$389 million to \$740 million.

*Continued on page 3.*

### In This Issue

UST Cleanup Program .....	2
Post-Secondary Vocational....	3
Education Mandate	
Teacher's Pension Proposal ..	4

## UST Cleanup Program to Provide Grants to Cities and Towns

Chapter 524 of the Acts of 1990, An Act Relative to Protecting the Environment Through the Establishment and Administration of an Underground Storage Tank (UST) Cleanup Program, was signed into law on January 2, 1991. This new law, incorporated into the Massachusetts General Laws as Chapter 21J, was passed in order to meet the technical and financial requirements of the federal Environmental Protection Agency's (EPA) underground storage tank regulations and to respond to Auditor A. Joseph DeNucci's mandate ruling.

In January 1990, the Division of Local Mandates (DLM) ruled that the state regulations requiring testing and removal of certain USTs were unfunded mandates. However, the Massachusetts Board of Fire Prevention Regulations (BFPR) amended its regulations, 527 CMR 9.00 et seq., in November 1989 to adopt the EPA tank testing, leak detection and upgrading requirement deadlines. Therefore, much of this issue has been removed from the purview of the Local Mandate Law. Nonetheless, DLM has identified 29 cities and towns to be eligible for reimbursement.

Chapter 524 creates an Underground Storage Tank Petroleum Product Cleanup Fund that will be financed by fees paid by operators of commercial gasoline stations and by other owners of underground storage tanks registered with the state's Department of Public Safety. City and town, farm and residential tanks and those owned by the Commonwealth are exempt from these fees.

The purpose of this fund, which will be administered by a newly created Underground Storage Tank Petroleum Cleanup Fund Administra-

tive Review Board, has two main objectives:

1. It will assist in the environmental cleanup of leaking underground storage tanks (LUSTs). The fund will provide partial reimbursement to owners or operators, including cities and towns, of underground storage tanks for expenses incurred in replacing LUSTs or in rectifying releases of petroleum products from tanks. However, only those UST owners and operators who are in full compliance with all applicable federal and state regulations and statutes are eligible for reimbursement.
2. It creates a program to provide grants to cities, towns, districts and other governmental agencies for the purpose of removing or replacing and testing certain above ground and underground fuel storage tanks that they own or operate.

Under the new law, cities and towns that file the necessary statement with the UST Administrative Review Board will be reimbursed for tank removal/replacement costs:

- Incurred on or after January 1, 1989, or
- Up until six months after the board publishes its regulations, which are scheduled for July 1, 1991 promulgation.

Municipalities that choose not to remove their tanks by January 1, 1992, must notify the board they intend to continue using their tanks in compliance with state and EPA regulations. However, they will not be eligible for tank removal or replacement reimbursement for at least five years after such notification to the board.

Cities and towns that own tanks that do not have both an acceptable

form of leak detection and spill/overflow protection devices may apply for annual reimbursement for tank-tightness-testing expenses until December 1998. The EPA has set this date as the deadline by which all fuel USTs must be retrofitted with monthly-monitoring - leak detection, corrosion protection, and spill/overflow prevention equipment.

Reimbursement for UST removal costs is not automatic. Monies from the fund are subject to appropriation and will be dispensed only upon written order of the Secretary of Administration and Finance, or his designee. Payments will be made annually over ten years and will be part of the annual local aid distribution to municipalities. The board must issue its decision on funding eligibility within 45 days following receipt of a claim for reimbursement. No owner or operator who has applied for reimbursement will be excused from responsibilities with respect to environmental cleanup, tank removal or replacement, and testing because of any failure or delay in reimbursement.

State reimbursements will be made only after a deductible is assumed by the city or town. The deductible ranges from the first \$5,000 to \$10,000 of the reimburseable expenses, depending on the number of USTs a municipality owns.

Finally, Chapter 33, Section 3 of the Acts of 1991, which provides a bond authorization of \$180 million from the state highway fund to municipalities for local road and highway construction and reconstruction projects, also allows these funds to be expended for the repair, replacement or removal of municipal underground fuel tanks.



## Post-Secondary Vocational Education Mandate

**T**he Division of Local Mandates (DLM) has determined that Chapter 424 of the Acts of 1984, An Act Relative to Certain Persons Enrolled in Vocational Education Programs, is an unfunded state mandate.

The Town of Easthampton petitioned DLM when the Department of Education (DOE) approved the applications of three Easthampton candidates over 20 years of age to attend out-of-town practical nursing programs at the town's expense. As a result of Chapter 424, "age" was deleted as a factor to be considered when reviewing applications for non-residents for post-secondary vocational programs.

Auditor A. Joseph DeNucci noted in his letter to the Board of Select-

men in Easthampton that "removal of the age cap expands eligibility for municipality-supported tuition payments and has imposed a cost of \$7,705 upon the town." Auditor DeNucci advised the Chairman of the Board of Selectmen that "DLM's determination, in itself, does not relieve the Town of Easthampton of the duty to pay \$7,705 for three students to attend the vocational program." DeNucci reminded the town that "such relief could come only via a superior court declaratory judgment or a legislative remedy" and promised "to support any corrective action the General Court may take to relieve the Town of Easthampton and other municipalities from this mandated cost."

In response to DLM's determination, the Town of Easthampton in March filed a class action suit in superior court on behalf of other cities and towns facing similar costs mandated by Chapter 424. The suit asks the court to "make a judicial determination of deficiency and exemption" from Chapter 424 and, further, "permanently enjoin the Commissioner of Education from overruling the disapproval of a local superintendent where the applicant is age 20 or older and is seeking out-of-town/city admission to a vocational education program at the post-secondary level."

In addition, the suit asks the court to prevent the Commissioner from reducing school aid to any municipality failing to pay tuition for such post-secondary students under Chapter 424.

## Auditor's Special Education Study Completed

*Continued from page 1.*

The report predicts that funding constraints and a public school population that is projected to increase 7% over the next five years will present a real crisis in public education. The trend of increased placements in educational settings outside the regular classroom is of even more concern. The report concludes that the Commonwealth must reassess and improve the delivery of equal educational services consistent with Chapter 766's intent of educating special needs students in the least restrictive appropriate setting.

During the 1980's the number of placements outside the regular classroom setting increased 28%. This trend is expensive but, more importantly, contradicts Chapter 766 objectives by segregating students

from their peers and from regular classroom activities.

The Auditor emphasized that implementation of the report's recommendations will require strong leadership and support from state officials: "Financial resources realized through the use of more integrated, less costly special education programs can be reinvested in regular education programs. With the adoption of these recommendations, the Commonwealth can then provide mainstream educational opportunities for more special needs children while improving the regular education classroom to the benefit of all children."

The report also includes recommendations concerning the utilization and oversight of educational collaboratives, private school tuition

stability, the role of the Department of Education, and improved data collection of the numbers and types of special needs children served by the Commonwealth.

Auditor DeNucci continued, "I want to thank the many state and local officials, educators, and advocates who participated in surveys and interviews, or in other ways contributed to this study. I look forward to continuing to work with you on this matter. This report should provide a starting point for refocusing the Commonwealth's attention on the need to restructure public education."

Copies of the report are available by calling the Division of Local Mandates at 1-800-462-COST. Any questions or correspondence about the report should be directed to Attorney Emily Cousens, Project Supervisor.

## Teachers' Pension Proposal

A cost-cutting measure has been proposed in Section 210 of the Governor's FY 1992 state budget, House 1, that would require cities, towns and regional school districts to pay ten percent of the employer's share of teachers' retirement costs. Section 210 would impose an assessment on cities, towns and regional school districts that historically has been funded by the Commonwealth as provided in M.G.L. Chapter 32, Section 22.

The text of this new proposal contains the clause "notwithstanding the provisions of Section 27C of Chapter 29". Therefore, the intent of the proposal is clearly to override the mandate provisions of Proposition 2 1/2 and to force local governments to assume these new costs. If enacted, Section 210 would negate a mandate challenge in the courts by any city or town.

In announcing the Division of Local Mandate's advisory on this issue, Auditor A. Joseph DeNucci said, "The Local Mandate Law was

included in Proposition 2 1/2 to prevent precisely this type of state intrusion upon local finances."

Using both the assessment methodology in Section 210 and the FY 1992 teachers' pension obligations estimated by the Public Employee Retirement Administration (PERA), DLM found that cities, towns and regional school districts would be assessed \$31.3 million in FY 1993. The City of Boston, for example, would lose \$2.75 million in state reimbursement in the first year.

Auditor DeNucci, in his letter to local officials, asked them to make senators and representatives aware of the cost impact of this proposed mandate on municipalities. The Auditor wrote, "Please be assured that my office will work with the Legislature and the Massachusetts Municipal Association to see that this proposal is deleted from the FY 1992 state budget, thereby ensuring that cities and towns can avoid this new cost imposition and that the mandate statute will maintain its integrity."

Any questions about this pension proposal or the amount to be assessed to municipalities should be directed to DLM Director Tom Collins at 1-800-462-COST.

NOTE: At the time of printing this *DLM Report*, the House Budget (H.5700) was just passed and *did not* include this teachers' pension proposal.

### ***DLM Report***

*A publication of the  
Office of the State Auditor*

A. Joseph DeNucci  
*Auditor of the Commonwealth*

Kenneth A. Marchurs  
*Deputy Auditor*

Thomas F. Collins  
*Director, DLM*

Zvi A. Sesling  
*Director of Communications*

#### **CONTRIBUTORS**

Connie Gray, Diane Szulc, Maria Kreeft,  
Linda Costanzo, Emily Cousens



Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci, Auditor

#### **Division of Local Mandates**

100 Nashua Street, Room 1010  
Boston, Massachusetts 02114  
(617) 727-0980  
1-800-462-COST

Bulk Rate  
U.S. Postage  
**PAID**  
Boston, MA  
Permit NO. 55203

#### **Route to:**

- ☒ Legal counsel
- ☒ Fire Chief
- ☒ School Committee Chairman
- ☐ \_\_\_\_\_



# DLM

## R E P O R T

Office of the State Auditor  
Division of Local Mandates

A. Joseph DeNucci  
Auditor of the Commonwealth

### A Connection Between State and Local Government



*As the Weld Administration and the Legislature's Joint Committee on Education prepare to release the details of*

*their education reform packages, it is important that they address the fiscal and programmatic issues that have led to the crisis that now exists in our public primary and secondary school systems. One of the issues that should not be neglected is the intense competition between regular and special education for decreasing public funds.*

*In March of this year, my office released the results of a comprehensive study of the Commonwealth's special education program. The report clearly shows the link between the erosion of our regular education system and the resultant, significant growth of the state's special education program. The report offers realistic recommendations for rethinking the way we deliver educational services to our children without compromising the integrity of our special education program.*

*In 1972, the Commonwealth adopted one of the most significant laws in the history of Massachusetts, Chapter 766 of the Acts of 1972, the*  
*Continued on page 2.*

## Mandatory Recycling Bill Passes in the House

**B**y unanimous vote on November 18, the Massachusetts House of Representatives approved a comprehensive bill to promote recycling, waste reduction, and composting in the Commonwealth. H-6300 would require cities, towns, and solid waste districts to operate recycling programs by July 1996.

The Division of Local Mandates (DLM) has been working with the Joint Committee on Natural Resources and Agriculture as well as the House Ways and Means Committee to determine the cost impact of mandatory recycling. The cost of implementing earlier versions of the bill had been estimated at \$30 million. The bill includes grants and loans to support local recycling initiatives.

### Municipal Rights Protected

Certain sections of the earlier versions of this bill (H-6133 and H-6244) concerned Auditor DeNucci because they contained language that would have eliminated municipal rights under the anti-mandate law. In addition, to make up for any shortfall in state funding of mandatory recycling, language was included to override the Proposition 2 1/2 tax levy limitation.

H-6133, for example, contained language that would cap grants from the Department of Environmental Protection (DEP) to cover municipal

or district recycling costs at 105% of the disposal costs for the Fiscal Year ending June 30, 1994. In addition, this bill stated that "The receipt of any financial assistance pursuant to this chapter shall constitute an acceptance of said chapter and all regulations promulgated thereunder for the purposes of paragraph (g) of Chapter 29, Section 27C," (the anti-mandate provision of Proposition 2 1/2).

Several sections of H-6244, which was substituted for H-6133, also contained specific language that would exempt the costs imposed on cities and towns as a result of mandatory recycling from the anti-mandate law. Another section excluded the net cost increase of implementing a recycling program from calculating the "total taxes assessed" when setting a tax rate.

These sections of H-6244 would have significantly impacted cities and towns. First, they would have excluded the recycling costs of the new program from the protections of the anti-mandate statute. Second, they automatically increased local prop-

*Continued on page 3.*

### In This Issue

Mandate Relief .....	3
Polling Hours Funds .....	4
Arthur DeCoursey Departs ....	4



## Message from the Auditor

*Continued from page 1.*

Special Education Law. This law, which became a national landmark and model, established the procedures for recognizing and serving special needs students and "mainstreaming," or integrating, such children into the regular school environment to the maximum extent appropriate.

Over the last decade, the growth in expenses and enrollments in our Chapter 766 program has been extensive. Despite a 17% decline in overall public school enrollment, special education enrollment has increased by 6%. More students are being placed in programs outside the regular classroom, and program costs have risen dramatically, far outpacing inflation. From 1985 to 1989, program costs increased from \$389 million to \$740 million, a 90% increase in just five years. Compounding this dramatic cost escalation are the withdrawal of the federal government from its funding commitment as well as recent reductions in local aid.

In addition, over the next several years, we face increased enrollments in our public schools for the first time since the 1970s. These factors are increasing the competition between special and regular education for school funds, a tension that is not in the best interest of our children.

What can be done to bring spiralling costs under control while still adequately serving special needs students? My report calls for a restructuring of the increasingly dual, separate systems. The present deficiencies within the regular education system, such as larger classes and fewer resources, have compelled frustrated parents, teachers and ad-

ministrators to seek special education for students, often in more expensive settings. My report contains 41 recommendations that, if adopted, would provide realistic alternatives to the present situation.

The most important recommendation is a call for a statewide initiative to mainstream more special education students back into the regular classroom to the maximum extent appropriate. If this initiative is implemented, substantial funds will be available for re-allocation to the regular education programs. These savings can provide increased funding for teacher training, teacher aides, remedial classes, counseling and pre-referral services to allow additional special needs students the opportunity to interact with their peers. This will reduce the stigmatizing effect of attending segregated classrooms while enriching the regular education classroom for all students.

My report also identifies the potential for \$40 to \$50 million per year in increased Medicaid and other third-party insurance reimbursements for medically related services provided as part of a child's special education plan. These services, which cost schools approximately \$125 million per year, would include occupational, physical, or speech therapy; assessments; counseling; and audiological and vision services. I have filed legislation to establish a pilot cost-recovery program to gain the experience necessary for statewide implementation. One critical element to my proposal is that all such reimbursements be returned directly to school districts to fund education programs.

In addition, I have made recommendations concerning the utiliza-

tion and improved oversight of educational collaboratives, the stabilization of private school tuition rates, and the role of the Department of Education in providing support and oversight to local school districts.

Reorganizing the special education system will require the efforts and cooperation of numerous and diverse constituencies involved in both regular and special education. These include the Legislature, the Administration, teachers, school administrators, advocacy groups and, most importantly, parents. I hope that my report is used as a catalyst to effect meaningful change.

Although the goals of Chapter 766 are indisputable and the program has been successful beyond expectation in enabling children with special needs to reach their full academic and vocational potential, the Commonwealth cannot continue to sustain two expensive and increasingly separate educational systems. More importantly, if we continue to maintain this dual educational system, we will deprive both regular and special education students of the educational opportunities they deserve.

For a copy of the 766 report, please contact DLM at 1-800-462-2678. For an update on the progress of certain special education measures, ask for DLM Legislative Coordinator, Phil Aube. Questions about the study and report may be directed to Emily Cousens, DLM Legal Counsel.



## Highlights of House 6300

### *An Act Promoting Recycling, Waste Reduction, and Composting in the Commonwealth*

#### SECTIONS 1 & 1A

Amends Chapter 21H affecting Refuse Burning Facilities (RBF).

#### SECTIONS 2 & 3

States the assumptions and conditions that lead to a need for a comprehensive Solid Waste Management System (SWMS) and packaging control system.

#### SECTION 4

Creates Chapter 21K & L of the Massachusetts General Laws.

#### *CHAPTER 21K - The Massachusetts Solid Waste Recycling Act*

##### S. 5 - DEP Data Collection Requirements:

- Requires DEP, on or before March 1 each year, to obtain and collect recycling information from each municipality and district that has implemented a recycling program.

##### S. 6 - Municipal Responsibilities:

- On or before July 1, 1996, each municipality and solid waste district shall implement a recycling program.
- A municipal recycling program shall include an ordinance, bylaw, or regulation, adopted by the governing body of the municipality, mandating source-separated designated materials that shall include, at a minimum: newsprint, all categories of plastic bottles, rigid plastic containers, aluminum, steel, tin, iron, glass, and yard waste.

- To be DEP-approved, existing or new programs must permit at least 50% of the population of the municipality to have access to the program.
- Local government shall conduct public education programs that explain how the system operates, responsibilities, dates of collection, incentives, and penalties.
- The program shall prohibit designated materials from being moved or commingled with solid waste or other contaminants.
- DEP is prohibited from requiring any city or town to have curbside collection as a condition of an approved program.

##### S. 7 - Financial Assistance to Municipalities:

- DEP shall provide financial assistance to municipalities and districts with a DEP-approved recycling program for the cost of developing and implementing such a program.
- DEP will provide financial assistance in the form of grants and loans, and in consultation with the Municipal Recycling Advisory Committee, will establish a priority system for such allocation.
- Interest free loans will be available to any municipality or district that implements recycling in accordance with S. 6 and for which future combined recycling and disposal costs do not exceed 100% of the municipality's costs for FY ending 6/30/94 or FY 6/30/91, whichever is lower.

- Grants will be available to municipalities and districts, in accordance with S. 6, for their combined recycling and disposal costs exceeding 100% of their current disposal costs.
- Financial assistance will be available for all approved costs incurred by a municipality beginning 7/1/94 and ending 6/30/99.
- Loans shall be repaid under terms and conditions set by DEP and shall not extend beyond 6/30/2006. Defaults will be recovered by reducing Local Aid distributions from the Commonwealth.

##### S. 8-11 - State Agency Recycling and Procurement of Recycled Goods

##### S. 12 - Composting Provisions After 12/31/91:

- No person shall knowingly dispose of or contract for the disposal of yard waste.
- No owner/operator of a landfill or RBF shall knowingly accept yard waste for final disposal unless the facility provides for separate composting of yard waste.

##### S. 13-16 - Enforcement, Municipal Compliance, DEP Inspection, and Fines

##### S. 17 - Promulgation of DEP Regulations

##### S. 18 - Landfill Mining

*Continued*

# Highlights of Chapter 336 of the Acts of 1991

## *An Act Relative to Deferring the Compensation and Funding of Certain Teachers' Salaries for Cities, Towns, and Regional School Districts.*

This is an emergency law signed by the Governor on November 27, 1991 to correct some of the municipal concerns pursuant to Chapter 223 of the Acts of 1991.

### **SECTION 1**

#### **Amortization Provisions**

Municipalities and regional school districts may in FY 1993 further defer a part of their teachers' compensation by vote of their town meeting, town council or city council, with the approval of the mayor where required by law, or by vote of their regional school committee.

Deferral shall be in accordance with the following schedule:

- In the FY beginning after 6/30/92 and before 6/30/96, a city, town, or regional school district may defer the entire amount of its teachers' compensation deferred in the FY beginning 7/1/91.
- In the FY beginning after 6/30/96 and each successive year thereafter, the city, town, or regional school district shall amortize the amount deferred in FY 7/1/91 by raising in equal installments in its local budget or regional school budget, 1/15 of the deferral amount. Cities, towns, and regional school districts may at any time elect to amortize the deferral amount on a more rapid schedule.

The act prohibits cities, towns, and regional school districts from charging the amount of such deferred payments to the school budget of the FY beginning 7/1/92.

### **SECTION 2**

#### **Regional School District Deferral**

Where a regional school district does not reduce assessments to its

member cities and towns on account of a deferral in the FY beginning 7/1/91, a member may vote to defer a portion of its assessment equal to the amount by which the city or town's assessment would have been reduced if the district had deferred part of its teachers' compensation.

### **SECTION 3**

For the FY beginning 7/1/92, the regional school district shall defer an amount of its budget for said FY equal to the amount of its teachers' compensation that it was authorized to defer for the FY beginning 7/1/91, unless the regional school committee and majority of the member cities and towns vote by 2/15/92 to reject such deferral for the district.

### **SECTION 4**

Teachers' compensation shall be deemed to be fully earned at the end of the school year, and proportionately during the school year, notwithstanding the provisions of Chapter 223 and M.G.L. Chapters 32, 32B, 151A, and 152.

### **SECTION 5**

A city or town may accept the provisions of Chapter 223 in accordance with the requirements of that chapter at any time before it fixes its tax rate for the FY beginning 7/1/91. A regional school district may reject the deferral of a portion of its teachers' summer pay in the manner provided in Chapter 223 up to 14 days after the effective date of Chapter 336.

### **SECTION 6**

If a city or town or regional school district reduces its school budget through a deferral of a portion of its teachers' compensation, that school

budget shall be deemed to include the amount of the deferral for the purposes of determining eligibility for equal education opportunity grants. Such deferral shall not be included in the calculation of local direct services expenditures in the year that the deferred compensation is actually paid.

## **House 6300**

*Continued*

### **CHAPTER 21L - The Massachusetts Packaging Reduction Act**

The intent of this Chapter is to persuade Massachusetts businesses to use packaging that will be reduced, reused, recycled, made of recycled materials or made of materials which meet a minimum recycling rate of at least 30% in 1999 and 50% in 2002. In theory, the mandate on businesses will create demand for materials recycled by cities and towns.

### **SECTION 5**

#### **Amendments to M.G.L. Chapter 40**

#### **S. 5H: Solid Waste Management Fund**

- A city or town may establish an integrated solid waste management fund to receive monies from the Commonwealth or federal government, from penalties assessed for violations, or from taxation of private Resource Recovery Facilities.
- A city or town shall appropriate monies from the fund for planning, implementation, operation, maintenance, improvement, expansion and administration of a recycling or composting program.



## Mandatory Recycling Bill Passes in the House

*Continued from page 1.*

erty taxes. However, Representative Frank Hynes (Marshfield) successfully amended the bill by striking out the anti-mandate and property tax sections. Representative Edward B. Teague (Yarmouth) also amended the bill by adding a paragraph that would prohibit DEP from requiring any city or town to have curbside collection as a condition of an approved recycling program. When the House gave final approval to the bill, it had a new number, H-6300.

### **Municipal Recycling Program Required**

H-6300 would add Chapter 21K, the *Massachusetts Solid Waste Recycling Act*, to the Massachusetts General Laws. Chapter 21K would require each municipality and solid waste district to implement a recycling program in accordance with state mandated provisions on or before July 1, 1996. The bill would mandate a local ordinance, bylaw, or regulation requiring separation and recycling of newsprint. It would also require recycling of all categories of plastic bottles and rigid plastic containers, aluminum, steel, tin, iron, glass, and yard waste. In order for a recycling program to be approved by the Department of Environmental Protection (DEP), at least 50% of the population of the municipality or district must have access to the program. H-6300, if approved by the Senate and signed into law, will greatly enhance the powers of DEP to regulate recycling and composting programs in the Commonwealth.

### **State Loans and Grants**

H-6300 would also provide financial assistance to municipalities and solid waste districts. DEP, in consultation with the Municipal Recycling

Advisory Committee established under the bill, would determine eligibility for either grants or loans. These would begin in Fiscal Year 1995 and last up to five years to compensate for the cost of developing and implementing the new programs.

Interest-free loans for start-up costs would be provided to municipalities whose future combined recycling and disposal costs are lower than current disposal costs. Grants would be available to those municipalities whose future combined recycling and disposal costs exceed 100% of current disposal costs. The loans would be repaid under terms and conditions set by DEP and would not extend beyond FY 2006. Financial assistance would be available for all approved costs incurred by a municipality beginning with FY 1994 and ending with FY 1999.

The Legislature asked DLM to estimate specific statewide recycling

costs. To comply with this request, DLM is surveying those cities and towns with recycling and composting programs to determine the costs for the programs currently being run by municipalities.

DLM staff have visited over 100 municipalities to meet with recycling directors, landfill operators, directors of public works, business managers, and town administrators to obtain information on the existing collection, disposal, and recycling costs. DLM has also surveyed waste-to-energy contractors to determine the current and future contractual penalties for failure to deliver guaranteed levels of waste.

A report of DLM's findings and recommendations will be sent to the House and Senate before the bill is released from the Senate Committee on Ways and Means. If you have questions or would like additional information, please contact Thomas Collins, Director, at 1-800-462-2678.

## Mandate Relief

Cities and towns received a "good-news" letter in October from Commissioner of Public Works, James D. Kerasiotes, that rescinded a \$500 permit fee required of municipalities for construction access to state highways. In his letter, the Commissioner informed municipalities "That after review of the highway access fee schedule by this office, and the State Auditor's Division of Local Mandates, it has been determined that the continued imposition of these fees on your community is not in the best interest of either the town or the Massachusetts Department of Public Works (DPW)."

In 1990, the Secretary of Administration and Finance, under the former administration, ruled that DPW was to adopt a schedule of fees to offset the costs associated with the processing of permit applications for highway access and utility maintenance. The Town of Shrewsbury petitioned DLM, protesting that these new fees were a violation of the anti-mandate provisions of Proposition 2 1/2.

Auditor DeNucci ruled that the imposition of DPW permit fees on cities and towns was a new state mandate, and that the \$500 that the town paid to DPW should be refunded.

## 1992 Polling Hours Funds Certified

Every two years the Division of Local Mandates (DLM) surveys all the cities and towns in Massachusetts to determine the additional costs of the extended voting hours mandated by Chapter 503 of the Acts of 1983. This change in the election law increased the mandated number of polling hours from 10 to 13. For state elections, polls must now be open no later than 7 A.M. and remain open until 8 P.M. As a result of these extended hours beginning with the elections in 1984, new costs were imposed on communities for poll workers' salaries, police details, and related expenses. The Auditor ruled that these changes in the election law constituted a new mandate and should be funded by the Commonwealth.

DLM recently completed review and certification of the 1992 September primary and November general election cost figures and forwarded the data to the Secretary of State for the FY 1993 budget. The statewide total of incremental costs incurred by each city and town for the two elections is \$888,000. Sub-

ject to appropriation by the Legislature, funds to be distributed range from a low of \$51 for Mount Washington in Berkshire County to \$121,523 for the City of Boston.

Auditor DeNucci, in announcing the figures for the 1992 elections, noted, "The 1983 Uniform Polling Hours Act means that citizens of the Commonwealth have additional time to vote. However, under the anti-mandate provisions of Proposition 2 1/2, cities and towns should be reimbursed for any expenses incurred from legislative mandates."

Reimbursement funding for the March 1992 Presidential Primary is already included in the Secretary of State's budget for FY 1992. Distribution of funds for the March election will occur in February 1992 and in August for the September and November elections, pending legislative appropriation. These monies are not subject to further local appropriation and are to be used to compensate for the extended hours expenditures in the Town Clerk's or Board of Elections' budget.

## Arthur DeCoursey Departs

After 6 years of service to the Auditor's Office, Arthur DeCoursey has moved on to new challenges. DLM will miss the talent and enthusiasm he brought to the Field Services Program. We wish him well in his new ventures.

### **DLM Report**

*A publication of the  
Office of the State Auditor*

**A. Joseph DeNucci**  
*Auditor of the Commonwealth*

**Kenneth A. Marchurs**  
*Deputy Auditor, DLM*

**Thomas F. Collins**  
*Director, DLM*

**Zvi A. Sesling**  
*Director of Communications*

#### **CONTRIBUTORS**

**Connie Gray**  
**Diane Szulc**  
**Maria Kreeft**



Office of the State Auditor  
Division of Local Mandates  
A. Joseph DeNucci, Auditor

**Division of Local Mandates**  
100 Nashua Street, Room 1010  
Boston, Massachusetts 02114  
(617) 727-0980  
1-800-462-COST

Bulk Rate  
U.S. Postage  
**PAID**  
Boston, MA  
Permit NO. 55203

#### **Route to:**

- ☒ Legal counsel
- ☒ DPW Director
- ☒ School Committee Members
- ☐ \_\_\_\_\_